

AN EXACT
ABRIDGMENT
IN
ENGLISH.

Of the eleven Books of Reports of
the Learned Sir *Edward Coke*, Knight,
late Lord Chiefe Justice of *ENGLAND*,
and of the Councill of Estate to His
Majesty, King *JAMES*.

Composed by the Judicious, Sir *Thomas*
Ireland, Knight, late of *Graves Inn*, and
an Ancient Reader of that Hono-
rable SOCIETIE.

Wherein is briefly contained the very
substance and marrow of all those Reports,
together with the Resolutions on every CASE.

Also a perfect Table for the finding of
the Names of all those Cases, and the prin-
cipall matters therein contained. Very usefull for
all men, especially the Students and Practi-
sers of that Honorable Profession.

Brevitas Memoriae Amica.

The second Impression.

L O N D O N, Printed by *M. Simmons*, for *Matthew*
Walbancke, at *Graves Inn Gate*, and *H. Toyford*
in *Vine-Court* in the *Middle Temple*. 1651.

M^r William Phillips
Per Booke

~~On the eleven day of November~~
~~the named Sir Robert Knight~~
~~of the Court of Chancery~~
~~testify that~~

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THE SECOND EDITION.

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To the READER.

Gentle Reader;

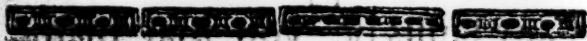


THE Abridger of these Reports was not onely a Learned Lawyer, but also was very Conversant with the Author of them: For my part, I was onely entreated by many Friends to view and correct the Copy from the Presse: If any faults be, you may blame the Printer. If I should commend the Originall work, I should disparage the Author, who all learned

To the Reader.

ned Lawyers know, that never any man wrote like him : and for the excellency of this Abridgement, it hath in it the very pith and substance of the Reports at large, and so I rest.

It is an abuse that the Lawes and usages of the Realme, with their Causes, are not written, whereby they may be knowne, so that they may be understood of all. Mirrour Justice, fol. 225.



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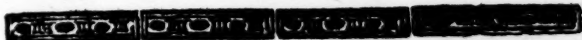
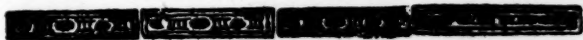
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T H E F I R S T B O O K .

The Lord Buckhursts case, 40. El. fo. 1.



F a man for him and his heires, do warrant Land to one and his heires ; this is a generall warranty, because there is not a restraint against any particular person in certeine.

Upon a Feoffment without warranty, the Feoffee shall have all the Charters, which comprize warranty, and others, though they be not given to him, because he is to defend the Title at his perill. Upon a Feoffment with warranty, without expresse grant, the Feoffee shall not have any Charters, which serve for to detaigne the warranty paramount. Also the Feoffor shall have all Charters, which serve for maintenance of the Title, but the Feoffee shall have all which maintaine the possession, as Court Rolls, and which are concomitant and incident to the possession.

If A. be seized of a Seigniorie, rent, advowson, or other thing that lyeth in grant, and grant the same over unto B. with warranty, and B. grant that to C. with warranty ; In this case C. shall have the first deed although B. be bound to warranty, for without that he cannot make any Defence against A. or any claiming by him.

Pelham's Case, 32. El. fo. 14.

A Tenant for life, the remainder in Taile, the remainder in fee, bargaines and sells the Land to
B one,

one, who before the Statute of 14. *El.* ca 8. suffers a recovery, in which *A.* is vouched, and voucheth over, and he in remainder enters, and the entry is adjudged lawfull ; for the Recovery is a Forfeiture, and the remainder may enter, for it is the common Assurance ; As if Tenant for life had levied a Fine, &c. and suing of execution, doth not toll the entry of the remainder, and a Writ of error was sued, and the plaintiffe released the errors.

Porters Case, 35. *El.* fo. 22.

32. **H.** 8. *P.* devised a house to his wife and her heires, upon condition, that she by advise, &c. with all convenient speed, after his death should assure it, &c. for maintenance of a Free School, &c. for ever, and dyes, 32. *H.* 8. the wife enters, and 3. *E.* 6. leases to *A.* for yeares, the heire of *P.* enters, and his entry adjudged lawfull ; because 23. *H.* 8. extends not to good uses, nor doth it make the conveyance voyd, or give entry, but makes the use voyd ; and admit the use voyd, yet the condition is not, for Counsell may devise, &c. as to have a Corporation by Pattent, and license to assure, and therefore the wife ought to have performed it.

Any man at this day may give Lands, Tenements, or hereditaments to any person or persons, for the finding of a Preacher, maintenance of a Schoole, maimed Souldiers, poore people, reparation of Churches, High wayes, Bridges, marriage of poore maids, or any other charitable uses. But it is good policy in every such Feoffment or estate, to reserve to the Feoffer and his heires any small rent, or to expresse some small summe of money for the consideration of the cause before receited.

Altonwoods

Altonwoods Case, 42. Eliz. fo. 41.

H. 8. seised of an estate Taile to him, and the heires males of his body, and of a Fee expectant, grants in Taile, and dyes without issue male; adjudged that the grant is voyd; for the King had an estate Taile in possession, by which he might grant a lawfull estate for his own life; and a Fee, by which he might grant an estate Taile by speciall recitall. And these words (*ex speciali gratia, &c.*) shall not produce a strainable construction against the rules of Law, or in *deceptionem regis*.

Capells Case, 23. Eliz. fo. 62.

A Tenant in Taile, the remainder to B. in Taile. B. grants a rent charge, A. suffers a common recovery, and dyes without issue, the grantee distraines, the Alienee of A. brings a Replevin; adjudged for the alienee by all the Justices of England that a common recovery against a Tenant in Taile; shall binde not onely the remainder, and all Leases, charges, &c. granted or made by him in remainder, but also the Reversion, and all Leases, charges, &c. granted by him in reversion.

Archers Case, 39. 40. Eliz. fo. 66.

L And was devised to the Father for life, the remainder to the next heire male of the Father, and to the heires males of his body; the devisor dyes, the Father infeoffes J. S. with warranty. First it was resolved by *Anderson and Walmesley et tor. Cur.* that the Father had but onely an estate for life, for that he had an expresse estate for life demised unto him,

and the remainder is limited to his next heire male in the singular number, and his right heire male may not enter for the forfeiture in his life, for he cannot be heire so long as he liveth. Secondly, It was resolved that the remainder to his right heire is a good remainder, although he cannot have a right heire during his life, but it sufficeth that it vesteth *eo instanti*, that the particular estate determineth, *Dyer. 14. Eliz. fo. 309.* Thirdly, it was resolved which was the principall point in this case, *per tot. Curiam*, that by the Feoffment of the Tenant for life, the remainder was destroyed, for every contingent remainder ought to vest, either during the particular estate, or at the least *eo instanti* that the particular estate determineth; for if the particular estate be ended or determined in Deed or in Law before the contingency fall, the remainder is voyd. And in this case, by the Feoffment of the Father, his estate for life was determined by condition in Law, which cannot be revived by any possibilitie; for this cause the contingent remainder is voyd, for by the Feoffment no right of the particular estate remaineth; and the better opinion was, that the warranty bindes the remainder, though in Abeyance.

Bredons Case, 39, 40. Eliz. fol. 76.

TENANT for life, and the remainder in Taile, joyne
in a fine Come ceo, &c. to A. who renders a Rent
charge of 40 l. a yeate, to Tenant for life, the re-
mainder dies without issue, the second remainder in
taile enters, Tenant for life, distraines for the Rent;
adjudged he may, and that the rent remaines, after
the death of Tenant in taile without issue, during
the life of Tenant for life; the fine was no discon-
tinuance, for every one gave that which he might
law-

lawfully give, and tis no forfeiture by Tenant for life, for the Law construes this. First, to be a grant of him in remainder; and after, the grant of Tenant for life, *Ut res magis valeat, &c.* If Tenant for life, and the first remainder in Taile, make a feoffment, tis no discontinuance, though the first remainder in taile dies without issue, nor is it a forfeiture, but the feoffee shall hold it during the life of Tenant for life; but if it be without deed, then tis a surrender of Tenant for life, and the feoffment of the remainder, *Ut res magis valeat, &c.*

Corbets Case, 42. Eliz. fol. 84. of Perpetuities.

Covenants to stand seised to the use of himselfe for life, and after to the use of A. his Eldest Son, and the Heires Males of his body, the remainder to the use of B. his second Son, and the Heires Males of his Body, &c. And if A. or his issue, &c. shall attempt, &c. to alien, &c. by which any estate shall be barred, &c. that after such attempt, and before any act executed the use and Estate of him so attempting, &c. shall cease onely as to him so attempting, in the same degree as if he were naturally dead, & not otherwise, and that then it shall be immediately to such persons, to whom it should come by the intent of the Indenture, &c. C. dyes, A. suffers a recovery, B. enters, &c. adjudged he could not, for this proviso is repugnant, impossible, and against Law; for the death of Tenant in taile, is not a cesser of the Estate taile, but death without issue Males; and by this reason the issue should have it in the life of the Father, &c. And for every discent, &c. Death, naturall or civill, is requisite, and tis not materiall, though Tenant in Taile had no issue at the time of the breach, for twas repugnant at the beginning; and the estate taile doth

not commence, by the having of issue, and a gift in
 raile upon condition, that if the Donee dyes, his e-
 state shall cease, is a void condition. Also the proviso
 is void for the incertainty, as a gift to two, *Et heredi-*
bus, is void though a Warranty be made to them and
 their Heires, and in *Fermine* and *Ascotts Case*, the like
 proviso was adjudg'd void; for be the proviso a con-
 dition or a limitation, the intire estate ought to be de-
 feated by it, and an Estate in Land cannot cease for
 part, and continue for the residue, nor cease for one
 person, and continue for another, nor cease for a time
 and revive after. The like judgement was betwixt
Chomly and *Humble*, but the Parliament, or Law, may
 make an estate void, as to one, and good to another,
 as Tenant in speciall raile, levies a fine, the issue is
 barred not the wife, so a release by the demandant,
 to the vouchee is good, not by a stranger; so, if an
 Executor surrender a tearme, to one respect tis ex-
 tinct, to another tis assets, &c. And uses are within
 the Statute *De donis*, though it speaks onely of Lands
 and Tenements, and there shall be a *Possessio fratris*,
 &c. of them, for they are guided by the Rules of the
 common Law. *Richill* in the time of R. 2. and *Thirning*
 in the time of H. 4. Justices, intended to make a
 perpetuity, but could not.

Shelley's Case, 23. Eliz. Fol. 94.

Edward Shelley leased for yeares, and after Cove-
 nanted to suffer a recovery, which should be to
 the use of himselfe, and after to the use of A. for 24.
 yeares, and after to the Heires Males of the body of
 the said E. S. and the Heires Males of the said Heires
 Males, &c. E. S. dyes 9 of *Octob.* the first day of the
 Terme, in the morning, betwixt five and six a clock,
 the recovery Passes the same day, and an *Habere faci-*

as *seisinam* awarded, the recovery was executed the 19 of Octob. 4 Decemb. the Wife of the Eldest Son (before dead) of E. S. was delivered of a Son, named Henry, Richard, the second Son of E. S. entered, and made a Lease, &c. Henry entred upon the Lessee, who brought an *Eject firma*, and Judgement was given for the Defendant, and twas resolved, that if Tenant in taile suffer a common recovery, and dye before execution, that execution may be sued against the issue, for the intended recompence, in favour of the common assurance, resolved that the reversion in judgement of Law is not in the recovery before execution sued, for the judgement is, *Quod recuperet seisinam*, which cannot be executed till entry, or claime, as 'tis of a Common, &c. granted upon condition; for when a man may enter, or claime, the Law will not put things in him, till entry or claime. The third and great point resolved, was, that the Uncle is in, as by discent, though he shall not have his age, nor be in ward. 1. Because the recovery being the Originall act, had its Essence in the life of E. S. to which the execution hath retrospect. 2. Because the use might have vested in E. S. if he were in life. 3. Neither the recoverors by their entry, nor the Sheriffe by making execution may make an Inheritance to whom they Please. 4. Because the Uncle claimed the use by the recovery and Indenture, and by words of limitation, not purchase.

Albanies Case, 28. Eliz. Fo. III.

A. By Indenture infeoffed B. of two Acres, to the use of A. for life, the remainder in taile to C. the remainder in fee to D. with a proviso, if E. dye without issue, that A. at any time by Indenture sealed, &c.

in the presence of foure, &c. may alter, &c. any use, &c. A. of the one Acre, infeoffes F. and for the other Acre, A. by Indenture renounces, surrenders, releases, &c. to B. C. and D. the said power, condition, authority, &c. E. dyes without issue, A. by Indenture in presence of foure, revokes the first uses, and limits new, resolved that by the feoffment, the power to revoke, as to limit new uses, was extinct, and by Wray, chiefe Justice, the future power may be released, as a condition subsequent, though the performance or breach cannot be done without an act precedent, but as to this poynt, the Court did not give their resolution: but the whole Court agreed, that if the power had been present, (as tis usuall) this might be extinct to any one, who hath a free hold in possession, reversion, or remainder. 'Twas moved (if the future power could not be released) whether it might be defeated by the words of defeasance, both being executory; and 'twas said that in all cases, when any thing executory is created by a deed, that the same thing, by consent of all parties to the creation, by their deed may be nullified, as a warranty, recognizance, rents, charge, annuities, covenant, &c. And of the same opinion was Wray chiefe Justice, and the whole Court, and judgement given according.

Chudleighs Case, Or the Case of perpetuities,
Fo. 120.

Sir Richard Chudleigh was seised in fee of the Manor of D. and had issue foure Sonnes, A. B. C. D. and 26. Aprill, the third and fourth of Philip and Mary, infeoffed E. F. &c. in fee, to the use of himselfe and his Heires of the body of G. then Wife of H. and after to the use of the performance of his Will,

Will, for ten yeares immediately after his death, and after to the use of the feoffees, and their Heires, during the life of A. the Eldest Sonne, the remainder to the use of the first issue Male of the body of A. and the Heires of the body of the first issue Male. and so to the second issue Male, the remainder to the use of B. the second Sonne, and the Heires of his body, the remainder to C. &c. the remainder to D. &c. the remainder to the right Heires of himselfe Sir *Richard Chudleigh*, died without issue of the body of G. 10. of the Queene the feoffees (C. living) by deed infeoffed, A. in fee, without consideration, he having notice of the first uses. A. hath issue a Sonne, named S. and after I. and after infeoffes Sir *I. C.* with warranty, S. died without issue, &c. I enters, &c. agreed, by all the Justices and Barons but two, that the feoffement made by the feoffees (which had an Estate for life) devests all the estates, and the future contingent uses also; and though A. had notice of the first use, 'tis not materiall, because the ancient uses were devested, and th's new estate cannot be subject to the ancient uses, which rose out of the ancient estate, agreed that 27. H. 8. doth not extend to destroy uses, otherwise then by execution, and transferring the possession to them, agreed by the most that 27. H. 8. doth not transerre the possession to any use, but onely to uses *In esse*, which doth appeare by the Statute, for there ought to be a person *In esse*, seised, and also a use *In esse*, for if there be onely a possibility of a use, there cannot be an execution of the possession to the use: the Statute sayes, *That the estate shall be out of the feoffees, and that the estate shall be in such person which hath the use* So that no Estate of the feoffees shall be transferred in abeyance; and upon this twas concluded, that contingent uses, or in possibility, may be destroyed or discontinued, before

fore that they come *In esse*, as they might at common Law; so the remainders limited in use here, shall follow the rule and reason of Estates executed in possession by the common law, and if the estate for life here had been determined by death, before the birth of the Sonne, the remainder in future should be voided, though the Sonne were borne after, for a remainder ought to vest during the particular estate, or *Eo instanti*, when it ends. And twas holden by all, that if the contingent use here, had come *In esse*, without alteration of the estate of the Land, it should be executed by the Statute of 27. H. 8. Also it was holden by most, that 27. H. 8. against the expresse Letter of it, shall not be taken by equiry, because, by preservation of contingent uses, mischieves intended to be prevented, shall be preserved and greater introduced. Popham chiefe Justice said, that by 27. H. 8. some uses *In esse* are executed presently, uses *in futuro* agreeable to Law, are executed if they come *In esse*, in due time, but uses not agreeable to Law are extirpated, for the intencion of the Statute, was, to restore the ancient common Law. Five other points adjudged, besides the principall matter. 1. When Tenant for life (the remainder being in taile to A.) infeoffes the reversioner, tis a forfeiture, for it devests the estate in remainder; so if there be Tenant in taile, the remainder in taile, &c. and the diversity is, when the privity and estate, is sole and immediate, when not. 2. If A. hath issue B. and C. infants, and a lease is made to A. for life, the remainder to B. in taile, the remainder to C. in taile. A. is disseised, and releases to the disseisor with warranty, and dyes, this discends upon B. within age, B. dyes, the warranty discends upon C. within age, C. comes to full age, and three yeares after enters, his entry is lawfull, for he might enter in the life of his Ancestor,

stor, and if he doth not enter, yet the warranty shall not binde him, otherwise it is, when he is put to action, and *Caveat*, that after his full age, he doth not suffer a discent before entry. 3. If a disseisor, &c. who hath a defeasible title in a Mannor, grant a voluntary estate by Coppy (being forfeited, or escheated to him) this grant shall not binde him that hath right, after a recontinuance of the Mannor, but admittances, which a disseisor, &c. makes to Coppy holds, are good, for they are in a manner judiciall acts, and shall binde the disseisee. 4. That an estate made to one and his Heires, during the life of B. is but an Estate for life, upon which a remainder may depend. 5. That an Estate made to A. and his Heires of the body of *Jane S.* is an Estate taile against the opinion of *Ascugh* 20. H. 6. 36.

Anne Maiowes Case, 35. Eliz. fo. 146.

FFeoffor and Feoffee upon condition, by Deed joyne in a grant of a rent charge to C. the condition is broken, the Feoffor reenters, the grantee distraines, the Feoffor brings a Replevin. Resolved, that the rent remaines; to the objection. that 'tis the grant of the Feoffee, and the confirmation onely of the Feoffor, and a confirmation cannot make a conditionall estate absolute, nor alter the quality of it, except it enlarge it: as if a Feoffor confirme the estate of the Feoffee upon condition, before the condition broken, it doth not make it absolute. Answered, and agreed by the Court, that there is a diversity, when the estate of him, to whom the confirmation is made, is upon an expresse condition; there the confirmation doth not toll the condition; but if such feoffee infeoffe another without condition, there a confirmation to the second feoffee extincts the condition. Feoffee

office upon condition grants a rent in fee; the feoffor confirms it to him and his heires, and after enters for condition broken, yet the rent remaines, and by Littleton every fee simple land may be charged one way or other, *Concurrentibus his, &c.* and the case 11. H. 7. is all one with our case, and here 'tis the stronger, because the grant and confirmation were by the same Deed, so that the rent was never subject to any condition.

The Rector of Chedingtons case, 40. Eliz. fo. 153.

2. E. 6. the Rector of *Ched.* demised the Rectory to *El. Elderker* for fourescore yeares, if she should live so long; and if she dyed, within the said terme, or aliened, that then her estate should cease, and then by the same Indenture demises the premises to *R. F.* for so many yeares, as shall remaine unexpired after the death, or alienation of *El.* for the residue of the terme of fourescore yeares, if he shall live so long, without alienation, &c. And if he dye, or alien within the said terme, then his estate shall cease; and then by the same Indenture he grants the premises to *W.* for so many yeares of the said terme of fourescore yeares, as remaine, if he lives without alienation, and if *W.* dyes, or aliens within the said terme, that his estate shall cease, and then he grants, &c. during so many of the fourescore yeares, which shall be unexpired to *T.* his executors and assignes, which Indenture, and estate, was confirmed by the Patron and Ordinary; the Rector dyes, *T.* dyes, *W.* dyes, and 17. *Eliz.* *Ellerker* dyes, after *R.* enters, and dyes, 18. *Eliz.* the executor of *T.* enters, and assignes to *J. S.* the successor of the Rector enters, and Leases to *B.* who upon ouster, brought an *Ej. Firma.* Resolved for the Plaintiffe, and that the Lease to *T.* is voyd. Argued for *T.* that his demise

demise was good, and a difference taken betwixt *terminum annorum*, and *tempus annorum*, as in this case of the demise to T. during so many yeares of the fourescore yeares, &c. not of the terme of fourescore yeares, if a Lease be made for 21. yeares, and after another Lease, to commence from the end and expiration of the said terme of yeares, and after the first Lease is surrendered, the second terme shall commence presently, not so; if it were from the end of the said 21. yeares. Resolved that the demises to R. and W. are voyd, because the terme that El. had, was *sub modo*, if she should so long live, which is determined by her death, *ergo*, no residue can remaine to R. and W. and so 'twas adjudged between Greene and Edwards, and the Court agreed the diversity betwixt the demises to R. and W. and the demise to T. 'twas argued that the demise to T. was voyd. 1. Because that the Lessor had not power for to contract for the land during the fourescore yeares, for he had but a possibility to have the land againe during the fourescore yeares, *viz.* if El. dyed, which possibility cannot be demised, but the Court delivered no opinion to this poynt. 2. That the Lease to T. was voyd, for the incertainty, how many yeares should be behinde, at the death of El. a termor grants to B. so many yeares as shall be behinde *tempore mortis sua*, 'tis voyd. *Locaster* case adjudged, a man possessed of a terme of 90. yeares, upon marriage of his Sonne, demised the land to his Sonne for 70. yeares, to commence after his death, the Lessor dyes, the Lease was adjudged good, because here he demised the land for 70. yeares, which is certain, in which, this differs from 7. E. 6. which diversity was agreed by the whole Court. 3. That 'twas voyd, because, he dyed in the life of El. so that the incertainty, cannot be reduced to a certainty in his life time, and so cannot rest in the executors, a Lease to one for so many

many yeares as his Executors shall name, is voyd. *Note*, a diversity betwixt a covenant and agreement, which is perfect, and certaine, though it takes effect in possession, upon a future matter precedent; and a covenant and agreement incertain, which is to be reduced to a certainty by matter *ex post facto*, for in the first case, the estate is bound presently, in the other not, which was agreed by the Court. 4. It was moved, if T. had been in life, the demise could not rest in him; T. dyed before R. or W. and R. survived *El.* and by the expresse condition precedent, R. could not take, except *El.* dyed within the terme, and W. could not take, except R. dyed within the terme, and this is as much as to say, that if R. dyes before *El.* and T. cannot take, except W. dye in the life of *El.* and R. survived *El.* So that both precedent contingencies faile, *viz.* the death of R. and W. in the life of *El.* and though the demise to R. and W. are voyd, yet the limitation precedent (*viz.* the death of R. and W. in the life of *El.*) to the demise to T. is not voyd, for his interest may depend upon both the contingencies, for so was the intention of the parties, and this was affirmed by the whole Court, by *Popham* Chiefe Justice, The Lease to T. was voyd for another cause, for it cannot commence upon a contingent, which depends upon another contingent, as here the demise to T. depends upon the contingent annexed to the demise, made to W. and the demise to W. depends upon a contingency annexed to the demise to R.

Digges Case, 42. *Eliz.* fo. 173.

C. *Digges* was seised of the land in question, and other lands in fee, and by Indenture 6. *Maij.* 10. of the Queene covenanted (in consideration of marriage betwixt him and his wife, and for the advancement

vancement of T. their Sonne, and for two hundred pounds paid to him before marriage) that he and his heires would stand seised to the use of himselfe for life, and after to T. in taile, and after to the use of himselfe in taile ; with a *proviso* (for the considerations aforesaid, &c.) that it should be lawfull for him, at any time during his life, with consent of certaine persons, by Indenture to be Inrolled in any of the Kings Courts, to revoke any of the uses, or estates, and for to limit new uses. 6. Maij. 12. of the Queene, C. by consent, &c. by Indenture inrolled in the Chancery, revoked the uses and estates aforesaid, in part of the land, and limited the use of it to him and his heires ; after, 20. Sept. 13. of the Queene, by Indenture with consent, &c. inrolled in Banck. M. 13. & 14. of the Queene, declared that for the payment of his debts, that from the time of the inrollment of this Deed in Chancery, all the uses in the first Indenture should be voyd, and that the land should be to the use of himselfe in fee : after, C. 26. Octob. 14. of the Queene by Indenture covenanted for to levie a Fine of all his land, part of which should be to the use of himselfe and his wife, and his heires ; which Fine was levied the same terme, after the Indenture dated 20. Sept. was inrolled in Chancery, after C. enters, and makes his claime : and whether C. dyed seised in fee of the land mentioned in the Deed of Revocation of 20. Sept. was the Question. Adjudged, 1. that C. D. might revoke part at one time, part at another, till he hath revoked all ; but he can revoke the same part but once, except that he hath a new power, &c. to uses newly limited ; for these words (*at any time*) amount to (*from time to time, &c.*) 2. That where the revocation is to be by Deed Indented to be inrolled, this is as much as to say, as by Deed Indented and inrolled, and till inrollment no revocation shall be,

be, for otherwise perchance none shall be inrolled. 3. That 'twas no perfect revocation by the Indenture of 20. Sept. till the Deed were inrolled in the Chancery; for though that the *proviso* of revocation in the first Indenture shall be satisfied with an inrollment, in any of the Kings Courts, yet for that the Indenture of revocation it selfe, limits the revocation to take effect, after the inrollment in Chancery, it ought to be so. 4. That the Fine levied before the inrollment in Chancery (which was before the revocation) hath extinct the power; see *Albanies* case before adjudged, and *Popham* Chiefe Justice said, that without question such a power might be released, for 'tis not meere collaterall, but favours and tastes of the estate of the land, which all the Court agreed. 5. If the Fine had not been, the auncient uses were determined, without entry or claime, because he himselfe was tenant for life of the land, and the act of revocation is as strong as claime; and this point was agreed in the *Earle of Salops* case. 6. By the same conveyance that the auncient uses are revoked, others may be raised, without claime, or other act, and the Law adjudges a priority of operation, *Whites* case adjudged according.

Mildmayes Case, 24. *Eliz.* fo. 175.

A Use cannot be raised by any covenant, proviso, or bargain, &c. upon a generall consideration, and therefore if a man by Deed indented and inrolled, &c. for divers good causes & considerations, bargain and sell his Land to another, and his heires *nihil operatur inde*, for no use shall be raised upon such generall considerations, for it doth not appeare to the Court, that the bargainor had *quid pro quo*. But the bargainee may averre, that money or other valuable consideration was

was paid or given, if in truth it was so, and the bargain and sale is good.

It was resolved that when uses are raised by covenant in the consideration of advancement of any of his blood, and after in the same Indenture a Proviso that the Covenantor may make Leases for yeares, &c. that the Covenantor in this case may not make Leases for yeares to his sonne, daughter; or any of his blood, much lesse to any other person, because that the power to make Leases for yeares was voyd, when the Indenture was sealed and delivered. For the covenant upon this generall consideration will not raise any use, and no particular averment in this case may be taken; but if the uses be limitted upon a recovery, fine, or feoffment, there needeth not any consideration to raise any of the uses. Resolved, that the words (*other consideration*) cannot comprise any consideration expressed in the Indenture before the proviso, for (*other*) ought to be in qualitie, nature, and person, different, and advancement of his daughter is a consideration mentioned before.

Anthony Mildmay brought an action of the case against Roger Standish, for saying that Lands were lawfully assured to John Talbot for 1600. yeares, and that he was lawfully possessed of the same rearme; whereas in truth the said Lands were not lawfully assured for the said rearme, nor the said John Talbot was lawfully possessed of the interest thereof. And so for slaundering of the title by speaking of the words, Mildmay brought an action. Standish justified the words, and shewed the title of Talbot, and it was adjudged that the action was maintaineable and good, although that Talbot had a limitation of the Land by will, which was the

the reason that *Standish* (being a man not learned in the Lawes) affirmed the words, yet because he tooke upon him the notice of the Law, and medled in a matter that did not concerne him, Judgement was given for *Mildmay*; *Et ignorantia juris non excusat.*



THE SECOND BOOK.

Of Sir Edward Coke, Lord, &c.

Mansers Case, 26. Eliz. fo. 3.



IF a man be unlearned and cannot read, and be bound to doe an act of sealing assurances, writings, &c. upon tender, &c. he is not bound to seale and deliver any such writing, if there be not some ready which may read the Deed if the party so require it, and in the same language and tongue that he understandeth. *Ignorantia duplex est facti & juris*, and ignorance in reading, or of the language. *Quæ sunt ignorantia facti*, may excuse, but *ignorantia juris non excusat*, and if it be read unto him, he may not have a reasonable time to shew it to his Councell learned, to see whether it agree with his bond or covenant; for he must seale it at his perill, or if the same be truly expounded to him, it is good enough. But if it be read amisse, or declared contrary to what it is, and thereby the illiterate man is deceived, he may very well plead *non est factum*; For the Law saith, it is not his Deed; and so it was adjudged in *Thoroughgoods case*, being the third case in this second Booke Resolved, that if a man be bound that a stranger shall doe an act, in such case he takes upon him, that he shall doe it at his perill; for he which is bound, takes more upon him for a stranger, then for himselfe, in many cases. If a man plead, that he hath

kept a man indemnified, &c. he ought to shew how, otherwise, where he pleads in the negative, *Non fuit damnificatus.*

Goddards Case, 26. Eliz. fo. 4.

AN obligation dated the fourth of Aprill Anno 24. El. and delivered as the Deed of the partie 30. July An. 23. El. adjudged the Deed of the partie; for though the Plaintiffe in pleading, cannot alledge the delivery before the Date, because he is estopped, yet a Jury which are sworne to speake the truth, shall not be estopped. The Date of a Deed is not the substance of the Deed. For if it want Date, or have an impossible Date, as the 30. February, the Deed is good. For there are three things of the essence or instance of a Deed (*viz.*) writing in paper or parchment, sealing, and delivery. And if it have these three, although it want, *In cuius rei testimonium Sigillum suum apposuit, &c.* yet the Deed is good; and when a Deed is delivered, it takes effect by the delivery; not by the Date.

Thoroughgoods Case, 26. Eliz. fo. 9.

RESOLVED, that 'tis not materiall, whether the party to whom the Deed is made, or another, by his procurement; or a Stranger of his own head, reades the writing in other words, then the writing is, so that he that seales it, be a lay man, and (without covin in him) deceived, and the pleading of it is alwayes generall, without shewing by whom 'twas read; and A. shall avoyde an obligation to B. by pleading that he did it by menace of C. Resolved, that such a lay man is not bound to deliver a Deed, if no body be present that can reade it, in such language as he can understand,

stand, and if it be read in other words, it shall not binde him, and 'tis at the perill of him to whom 'tis made, that the very effect and purport of it be declared, if it be required, but if he doe not request it, he shall be bound by it, though it be made contrary to his meaning. Resolved, that it shall not binde, if the effect be declared in other words, then it is, as if the Deed had been read in other words. Two Justices, a Feoffment of two acres, is read as of one, it shall not binde; see *Mansers case* before.

Wisemans Case, 27. *Elix.* fo. 15.

TENANT in taile of certaine Lands, the remainder to another in Fee, he in remainder by Deed indented and inrolled in consideration of bloud, &c. as for other good considerations, doth covenant to stand seized of the said Lands to the use of himselfe, and of the heires males of his body. And for default thereof, to the use of the Queene, her heires and successors. After the tenant in taile in possession suffereth a common recovery with voucher. And whether it was a barre to the issue in taile was the question; And it was adjudged that the issue in taile was barred, for good considerations are too general to raise any use, without speciall averment, that valuable or other good consideration was given. Resolved, that the Land should continue in his name and bloud, is not a consideration to raise a use to the Queene, though the limitation to her, were, for the preservation of the taile against discontinuances and barres, for there wants *quid pro quo*. Resolved, if he had said in consideration, that the Queene is the head of the weale publique, and hath the care and charge, as well to preserve peace, as for to repell hostility, yet 'tis no good consideration, for Kings *ex officio* ought to go-

erne their Subjects in tranquility, which is implied in the word (*King.*) And admit the consideration hath been sufficient to raise a use to the Queene, yet that would not preserve the estate taile by force of the Act 34. H. 8. for no estate taile is preserved by the said Act, except the same estate taile be of the creation or provision of the King, and not where the estate taile is given or created of a common person without provision of the King, as may appeare by the preamble of the Act. Resolved, that before the Statute of 34. H. 8. a common recovery barred a taile created by the King.

Lanes Case, 39. Eliz. fo. 16.

THe Queene seised of a Mannor in right of her Crowne, by her Steward granted coppie-hold Lands, parcell thereof, to one by coppie, according to the custome in Fee. And after the Queene under the Exchequer Seale made a Lease of the same Lands to another for 21. yeares, who granted the same Terme to the coppie-holder, and after the Queene reciring the Lease for yeares, granted the reversion thereof in Fee, the Terme of 21. yeares expired. The Parentee of the reversion entred upon the coppie-holder, and the entrie was adjudged good. Resolved, that the Lease under the Exchequer Seale was good, by the usage there, for the course of every Court, is as a law, of which the common law takes notice, without alledging of it in pleading; and every Court at *Westminster* is bound to take notice of the Customes of other Courts, otherwise of Courts in the Countrey: and the order of Exchequer is to make Leases by (*Committimus* such land.) Resolved, that the estate of the Coppie-holder was determined by the acceptance of the Lease for yeares; And so it was adjudged

Y adjudged against the Coppie-holder, not notwithstanding that the Coppie-holders estate is taken to be but an estate at will, yet the custome hath so established the estate of the Coppieholder, that he is not removeable at the will of the Lord, so long as he performs his customes and services: and by the same reason the Lord cannot determine his interest, by any act that he can doe. And so it hath been adjudged many times. And the acceptance of this Lease was the proper act of the Coppie-holder. Resolved, that by the severance of the free-hold from the Mannor, the Coppiehold estate is nor extinguished.

Baldwyns Case, 31. Eliz. fo. 23.

THings which lye in grant, and take the essence and effect by delivery of a Deed, without other ceremony, as rent, or common out of Lands, &c. by the premisses of the Deed to one and his heires, *habendum* to the grantee for yeares, or life, this *habendum* is repugnant to the premisses, for the Fee passeth by the premisses by the delivery of the Deed, and therefore the *habendum* is voyd. And when a man giveth Lands by Deed in Fee by the premisses, *habendum* to the Lessee for life, there the *habendum* is voyd, and when livery is made, the effect of the Deed shall be taken the most strongly against the Feoffor, and the best for the Feoffee.

When a ceremony is requisite to the perfection of an estate in the premisses limited, and to the estate limited in the *habendum*, no ceremony is requisite but onely the delivery of the Deed, although the *habendum* be of meaner estate then the premisses, the *habendum* shall stand good and qualifie the generalitie of the premisses, as a Fee granted in the premisses, *habendum* for yeares, it is for yeares, and no inheritance.

itance. *Note* ; There is a diversity betwixt the estate implied in the premises, and expressed ; as if A. grant a rent to B. this is an estate for life, but if the *habendum* be for yeares, this is good, and qualifies the implication of the premises.

Case of Bankrupts, 31. Eliz. fo. 25.

RESOLVED, that a grant or assignment of goods, by a Bankrupt, after the Commission awarded, which is matter of Record, of which every one ought to take notice, and though to a Creditor, in satisfaction of his debt, is voyd, and that a sale of such goods, by the Commissioners, is good. Which sale, by the Statute of 13. of the Queene, ought to be equall, to every one rate, and rate like, according to the quantity, &c. And the Court resolved, that the proviso in the said Statute, concerning gifts *bona fide*, doth not make any gift good, but excludes them out of the penalty, &c. Commissioners may sell, by Deed, without inrollment, and though they have not seen the goods, agreed, that the distribution ought to be severall, not joynt, for the one debt, may be greater then the other, and in this case the Jury found, that the Commissioners sold the goods to three Creditors joyntly, but further, that the Bankrupt was indebted to them in 273. pounds, which shall be intended a joynt debt, and so good. Resolved, that the act giveth benefit to such as will come, and not to them that refuse ; *Et vigilantibus, Et non dormientibus, jura subveniunt* ; and every Creditor may take notice of the Commission, being matter of Record.

Benisworths Case, 33. Eliz. in communi Banco. fo. 31.

A Lease for yeares was made of one Messuage, one Close called *Raynolds*, and of divers other Lands
in

in Dale; and afterwards (the Lessee being in the house) the Lessor entered into the same Close, and maketh a Feoffment of the Messuage, and of the Lands therewith demised, and maketh livery in the same Close, and afterwards the Lessee reentreth into the said Close. And if this was a good Feoffment, and livery of seison of the said Close, (the Lessee nor any for him being in the said Close) was the question. And it was adjudged that the livery and seison was voyd, as well for the Close as for the Messuage; and the other Land therewith demised. For the Possession of the Messuage, which is his Castle, is a good possession of the Lands therewith demised, and it matters not, whether livery be made on the Land within view of the house, or not. When a man maketh a feoffment of a Messuage *cum pertinentiis*, he departeth with nothing thereby, but that which is parcel of the house, as buildings, cortelage, and gardens.

If a Lessee for yeares makes a Lease for a certaine Terme of any parcell, and so divides the possession thereof from the residue (if of this parcell so severed) Liverie be made, the possession in the residue by the first Lessee, is not any impediment to the liverie of this parcell, otherwise if a Lessee make a Lease, at will of any parcell, there his possession of the residue shall hinder the liverie made in this parcell, and with this judgement agreed all the other Justices, and Serjeants of Serjeants Inne in Fleetestre.

Doddingtons Case, 27. Eliz. fo. 32.

King H. 8. *Ex certa scientia, &c.* granted to A. for 300. l. *Omnia illa Messuagia in tenura Johannis Browne, Scituate in Wells, nuper prioratini de W. Spectant.*
And

26 Sir Rowland Heywards Case. Lib. 2.

And in truth the Lands lie in D. in this case 'twas resolved that the grant was voyd by the Common Law, as well in case of a common person, as the King, because the grant is generall, and is restrained to one certaine Village, and the grantee shall not have any Lands out of that Village, to which the generality of the grant is referred, for this Pronoun *illa*, hath his necessary reference as well to the Towne, as well as to the Tenure of I. B. for if either the one or the other faile, the grant is voyd. And so it was adjudged, *Per tot. cur. de Banco Regis*. Resolved also, that this grant was not holpen by the Statute of 34. H. 8. For no grants are holpen by this Statute, nor by any act of confirmation, but such as comprehend convenient certainty. 1. *Quia generale nihil certum implicat*. And here no Tenements are mentioned, to be granted, because the generall grant being intire, was referred to a falsity, and therefore it cannot be said that the Towne was mis-named, and great inconvenience would follow, if, &c. for the King should be deceived, but the Statute helps when there is convenient certainty, as a Mannor, Farme, Land, knowne by a certaine name, or containing so many Acres, &c. So that it may appeare what things the King intended to passe. Note, tis the most sure way, for the Patentee to expresse as much as he can in certainty, before the generall words.

Sir Rowland Heywards Case, In cur. Wardor 37.

Eliz. fo. 35.

Sir Rowland Heyward leased of a Mannor in Demeans, and repts, in consideration of money, doth demise, grant, Bargaine, and sell to A. the said Mannours, Lands, Tenements, an the reversions and

Lib. 2. Sir Rowland Heywards Case. 27

and remainders with all Rents reserved upon any demise, to have and to hold to A. and his assignes after the death of the Lessor for seaventeene yeares, rendering a rose, the indenture was inrolled, and after the Lessor by Indenture doth Covenant with B. to stand seised of the premisses, to the use of himselfe and the Heires of his body, and no attornment was made to A. The Question was, what passed to A? and it was resolved by *Popham* and *Anderson* chiefe Justices, and the Court, that A. may have his election, either to take the same by demise, at the common Law, or by bargain and Sale, *Per Statutum* 27. H. 8. without attornment, for it was one entire demise, and bargain of one Mannor without any fraction or division thereof, and this election remaineth to A. and his Executors and Assignes, for here is not Election, to claime one of two severall things by one Title, but to claime one thing by one of the two severall Titles; for where the things are severall, nothing passeth before Election, and the Election must precede; but when one thing passeth, the Election of the Title may be subsequent. For if I. have three Horses, and doe give to you one of them, the property comenceth by Election, and must be made in the life of the Parties.

The Bi: of *Sarum* had a great wood of 1000. Acres, called *Berewood*, and infeoffed another of one House, and seaventeene Acres, parcell of the Wood, and made liverie in the Wood House; nothing passeth of the Wood before Election and the Heire of the feoffee may not make Election. *Bullocks Case*, 10. *Eliz.* *Dyer*.

In case where election is given of two severall things, he which is the primer Agent, and that ought to doe the first act, shall have alwayes the Election. As if

a man grant a Rent of twenty shillings, or a Robe, the Grantor shall have the Election, for he is the primer Agent, either by paying the one, or delivering the other. If a man make a Lease rendring twenty shillings or a Robe, the Lessee shall have the Election, *Causa qua supra*; but if I give unto you one of my Horses in my Stable, there you shall have the Election, for you are the Primer Agent, by taking or seising one of them, and so of twenty trees in my Wood. Note for Elections these diversities. 1. When nothing passes to the grantee, &c. before Election, there it ought to be made, in the life of the Parties; but when the Estate passes presently, &c. the Grantee, &c. his Heire or Executor may elect. 2. When the same thing passes and the Donee, &c. hath Election, in what manner, &c. he will take it, the Donee, Heire, or Executor may elect. 3. When Election is given to severall persons, the first shall stand. 4. When Election is given of two severall things, he which ought to doe the first Act, shall have Election. 5. When the thing granted is annuall, and to have continuance, there the Election remaines to the Grantor (in case, where the Law gives him Election) as well after the day as before, otherwise tis when the thing is to be performed, *Unica vice*. 6. The feoffee, &c. by his act may forfeit his Election; as if A. infeoffe B. of two Acres, *Habendum*, the one for life, the other in Taile, and he before Election makes a feoffment of both; here the feoffor shall enter in which he pleases, for the wrong of the feoffee. 7. Though the Lessees here enter generally, yet they may Elect after; so, if one be Executor, and Devisee of a terme, and enters generally, &c. and after the Lessees, in the principall case, made Election, for to take by bargain and Sale, and had the Rents.

The Bishop of Wincbesters Case, 38. El. fo. 43.
In a prohibition.

R Esolved, that at common Law, none had capacity to take Tythes but spirituall persons, or *Personam mixtam*, as the King, and regularly no meere Layman was capable of them (except in speciall Cases) for he could not sue for them in Court Christian and regularly, a lay man had no remedy for them, till 32. H. 8. A Lay man may be discharged of Tythes, at the common Law, by grant or by composition, but not by prescription, for it is commonly said in our Law-Books, that a lay man may prescribe, *In modo decimandi*, but not *In non decimando*: And the reason is, because he is not (except in speciall Cases) capable of Tythes at the common Law, before the Statute of 32. H. 8. cap. 7. And therefore without speciall matter shewing, it shall not be intended that hee hath any lawfull discharge, and in favour of the Holy Church (although it may have a lawfull commencement) the Law will not suffer this prescription *In non decimando*, to put it to the Tryall of lay men, which sooner will straine their conscience for their private benefit, than render to the Church the duty which belongeth to it.

A spirituall person that was capable of Tythes at the common Law in p[er]manency may prescribe to be discharged of Tythes generally, or to have a portion of Tythes in the Land of another.

Before the Counsell of Lateran, every man might give his tythes to any spirituall person that he would; and if the Lands of the Bishop were discharged in his hands absolutely by prescription, the demising it to a lay man cannot make it chargeable, and the Bishop might reserve the greater Rent.

And in discharge of Tythes, the Judges of our Law doe know, that the Ecclesiasticall Judges will not allow any such allegation, and therefore a Traverse, *Abq; hoc quod iudices placitum, &c. recusarunt*, is insufficient for the refusall is not materiall, for the party might have a prohibition, before any plea pleaded by him, but in some Cases, the refusall is traversable, as twas adjudged in *Morris and Eatons Case*, where twas pleaded that the plaintiffe did not read the Articles, &c. and that the Ecclesiasticall Judge refused this Plea; But the truth is, a man may prescribe that hee and all others whose estate he hath in the Mannor of D. time out of remembrance, have paid to the Parson of C. for the time being, one certaine pension yearly, for the maintenance of Divine service there, in contentation of all Tythes, renewing, or happening within the same Mannor, and prescribe in respect of the pension payd, &c. to have all the Tythes within, &c. and this was adjudged good in *Banco Regis, Mich. 39. Et 40. El. Rotulo 199.* And that a lay person may sue for the Tythes, &c. For at the beginning it shall be intended, that the Lord was seised of the whole Mannor, before any tenancy was derived out of the same, and then by composition or other lawfull meanes, the Lord had all the Tythes within the Mannor, for the said Pension paying to the Parson, and the Law intends it was for Divine service, *Et pro bono Ecclesie*, the reason of which intendment is the continuall usage, time out of remembrance. And upon such speciall matter, a man might have Tythes, as appurtenant to a Mannor, for he prescribes in a *Que estate* in the Mannor, and therefore cannot have them in grosse, but twas adjudged *Winscombs Case* in a prohibition, that a man cannot prescribe generally in him, and all those, &c. to have Tythes appurtenant to a Mannor, without speciall mat-

Lib. 2. The Archb: of Canterburies Case. 31

matter shewne, because Tythes are due *Jure divino*.

*The Arch-Bishop of Canterburies Case, 38. of the
Queene, fo. 46.*

A Religious house in M. was given to E. 6. by the Statute of 1. E. 6. a Rectory which was impropriated to it, was granted to the Arch-Bishop of *Canterbury*, who leased to the Defendant, and Land within M. parcell of the said Colledge, came to the Lord *Cobham*, and from him to the Plaintiffe, who shewes, that the Master of the Colledge was seised of the said Land, and Rectory, *Simul & semel*, as well at the making of 31. H. 8. as of 1. E. 6. Resolved, that this Colledge came to the King by 1. E. 6. onely, for when 31. H. 8. speakes of dissolution, renouncing, relinquishing, forfeiture, giving up (which are inferior meanes by which, &c.) or by any other meanes, cannot be intended of an act of Parliament, which is the highest manner of conveyance that can be, and the makers would have placed this in the beginning, if they had intended it. Bishops are not included within 13. of the *Queene*, which Begins with Colledges, Deanes, and Chapters, &c. Also 1. E. 6. Enacts, that all Colledges by this Parliament shall be in actuall possession of the King, which last act being of as high nature, as the first, it cannot come to the King by 31. H. 8. and it was never pleaded, that of Colledges which came by 1. E. 6. the King was seised *Vigore* of the Statute of 31. H. 8. Resolved, that neither the Act, nor the meaning of 31. H. 8. extends to other Colledges then to those, which came to the King by 31. H. 8. for it should be absurd, that a Branch of the Act of 31. H. 8. should extend to a future Act of which the makers of 31. without a spirit of prophecy could not have foreknowledge: and the Act
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32 The Archb: of Canterburies Case. L. 2.

of 31. concludes in as large manner as the late Abbots, &c. which late, as it hath been agreed, extends onely to those to be dissolved by 31. Resolved, (admitting that the Colledge had come to the King by 31. H. 8.) that such a generall allegation of unity of possession of the Rectory, and the Land with it, was not sufficient, for no unity shall be sufficient, but lawfull and perpetuall unity of possession; time out of minde, as 'twas adjudged in *Knighly and Spencers case*; and that the generall allegation of the Plaintiffe, that the Master of the Colledge at the making of 1. E. 6. held the Land discharged, is not good, without shewing how, either by prescription, composition, or other lawfull meanes, as 'tis adjudged in the *Bishop of Winchester's case*; otherwise, if the Land had come by 31. then by force of the said Branch of discharge, such generall allegation had been good. Resolved, that no Ecclesiasticall house, except religious, was within the Statute of 31. H. 8. Resolved, that though 1. E. 6. saith, that the King shall have the lands of Colledges in as ample and large manner as the said Priests, &c. enjoyed the same; yet these generall words doe not discharge the land of any tythes, for they do not issue out of the land; for a Prior had tythes against his own Feoffment of the Mannor, and 'tis no good cause of prohibition, to alledge unity of possession in a Colledge, which came to the King by 1. E. 6. as 'tis upon 31. H. 8. in Abbyes, &c. For the Statute of 1. E. 6. hath no such clause of discharge of payment of tythes as 31. hath, and therefore such perpetuall unity will not serve upon 1. E. 6. So 'twas likewise resolved betwixt *Greene and Burskin*.

Sir Hugh

Sir Hugh Cholmleys Case, 39. of the Queene. fo. 50.

TENANT in Taile, the remainder in taile, the remainder bargaines and sells the Land and all his estate to J. S. to have for the life of Tenant in taile, the remainder to the Queene, &c. upon condition that the estate shall be voyd upon tender of 10. l. Tenant in Taile suffers a Recovery, to the use of himselfe and his heires, after the remainder tenders the ten pounds, &c. Resolved, the remainder to the Queene was voyd. 1. Because the grantee, for life of tenant in taile, tooke nothing, for 'tis a voyd grant, for the grantee shall never have any benefit by it, but such a grant of a reversion were good, for he shall have the services; but a Lease for life of J. S. the remainder to J. H. for life of J. S. is good, for this may take effect, by forfeiture of tenant for life; and remainder *dicatur, quasi terra remanens*, which cannot be here, and the remainder must take effect when the particular estate ends, *& vana est illa potentia, quæ nunquam venit in actum*. And the possibility for tenant in taile to enter in Religion, shall not make the remainder good, because 'tis remote, and it ought to be a common, *& propinqua possibilitas*, which shall make the remainder good, as death, coverture, dying without issue; remainder to a Corporation, which is not in esse, is voyd, though such be erected during the particular estate. 2. Because the Law will never adjudge a grant good, by reason of such a forrain possibility, for, 'tis *potentia remotissima & vana* and by intendment, *nunquam venit in actum*. 3. Because the remainder being tenant in taile, granted all his estate for the life of tenant in taile, so that there is no remainder left in the grantor, but in such case, the estate taile is in abeyance. *Blithmans case*. 35. of the Queene agreed,

tenant in taile covenants to stand seised to the use of himselfe for life, and after to his eldest Sonne in taile, the remainder to the Sonne is voyd : for when he had limited the use to himselfe for his own life, 'twas as much as he could limit by Law. Resolved, (admitting the remainder good to the Queene) that the common Recovery, hath barred the estate of the first grantee, and so the condition during his life ; for 'tis out of the Statute of 34. H. 8. being not of the gift of the Queene, &c. as *Wismans case* is before adjudged. A reversioner upon an estate taile, grants upon condition, a Recovery barres the reversion, and condition, and as *Capels case* is before adjudged, if the reversioner, or he in remainder grant a Lease, &c. and tenant in taile suffers a recovery, the possession shall never be subject to such charges. Resolved, that the payment to the first grantee, cannot devest the remainder out of the Queene. 1. Because the condition, during the life of the first grantee, was discharged. 2. Because, he that takes benefit of a condition, ought to have the intire estate, with which he departed, which cannot be here, for the estate of the first grantee, was barred by the recovery. 3. The tender to the first grantee, was to the intent, for to revest his estate, which cannot be, because 'twas barred, and therefore the payment cannot devest the remainder out of the Queene.

Buckleys Case ; 40. Eliz. in Communi Banc.
fo. 55.

TENANT for life, the remainder in Fee, tenant for life maketh a Lease for foure yeares in March 20. El. the Lessee enureth tenant for life, granteth the tenement's aforesaid to C. to hold from the feast of Saint John Baptist next ensuing for life, after the said Feast, the

the tenant for yeares attornes, the yeares expire, C. enters, and maketh a Lease at will to D. to whom the tenant for life levieth a Fine, he in remainder in Fee entreth and maketh a Lease to Buckler the tenant at will, entreth upon him, and Buckler the plaintiffe bringeth an *ejectione firma*, and judgement was given for the plaintiffe. In this case divers things were resolved. First, that the grant to C. was voyd, for the Law maketh construction upon the whole grant, and an estate of Free-hold may not commence *in futuro*. The office of the premisses of a Writing (*viz.*) Feoffment, Lease, &c. is to expresse the grantor, the grantee, and the thing granted. And the office of the *habendum* is to limit the estate; so that the generall implication of the estate, which should passe by the premisses, is alwayes controlled and qualified by the *habendum*; as a Lease to two, *habendum* to the one for life, the remainder to the other for life, here the generall implication of Joyntenancy is altered, and the *habendum* is not contrary to the premisses, for in the premisses no certaine estate is passed, and the grant being voyd at the beginning, the attornment after Midlommer, shall not make the reversion to passe. For *quod ab initio non valet, tractu temporis non convalescit*.

Resolved, that when the grantee entered, by colour of this voyd grant, he was a disseisor; but when the grant is good at commencement, but is to have its perfection, by an act subsequent, as livery, or attornment, and the grantee enters before the perfection, &c. he is not a disseisor, but a tenant at will. And if the Fine had been levied, to the disseisor, *come ceo*, &c. He which had the right of the remainder, might enter for a forfeiture, for a right of a particular estate may be forfeited, and entry given to him, who

hath but a right. Resolved, the Fine being levied to tenant at will, 'tis a forfeiture, and he which hath the right of the remainder, may enter, and the tenant for life, and at will, shall be estopped to say, *quod partes Finis nihil habuerunt*, and of such estoppells, which are by matter of Record, and trench to the dis-inheritance of those in reversion, &c. they shall take advantage, though strangers to the Record (for they are privies in estate.) A disseisor levieth a Fine to a stranger, the disseisor shall hold the Land in this case for ever, for the disseisor against his owne Fine may not claime the Lands, and the conusee may not enter, for the right which the conusor had, may not be transferred to him, but by the Fine the right is extinct, whereof the disseisor may take advantage.

Beckwithes Case, 27. Eliz. fo. 56.

IF the husband and the wife levie a fine of Lands, whereof they are seised in right of the wife, and the husband solely declare the use of the fine, this declaration shall binde the wife, if her dissent doe not appeare, although her assent to the limitation of the uses doe not appeare, for it shall be intended (if the contrary doe not appeare) that shee joyned with him also in the declaration of the uses of the fine. But if the husband declare one use, and the wife another use, they are both voyd; the declaration of the use, insues the ownership of the Land; for the one (*viz.*) the wife is not *sui juris sed sub potestate viri*, and hath the estate of the Land, and the husband is *sui juris*, and hath not the estate; and if a fine be reversed by nonage of the wife, all the estate shall be restored to the wife presently; for all the estate passed from her by the fine, and so it was adjudged *Banco regis*, in *Worseleys case*.

Resolved,

Resolved, that though the variance of the limitation, be onely in one estate, and they agree in all the other, yet all is voyd. But if two joynt tenants, or two having severall estates, vary, 'tis good, for every of their parts, and shall be directed by their interests; but if the variance had been in limitation of part of the land, and they had agreed in the use, it should be voyd for that part, and good for the residue.

Note, That though the husband might dispose of the land during coverture, yet, for the cause aforesaid, his declaration was voyd.

If A. tenant for life, and B. in reversion or remainder, both levie a fine together, generally the use shall be to A. for life, the reversion or remainder to B. in fee, for either of them grants that which lawfully he may grant; and either of them shall have the use, which the Law vesteth in them, according to the estate, which they would convey over.

Winningtons case, 40. of the Queene. fo. 59.

W. Infeoffed B. upon condition, to regive to the Feoffor for life, the remainder to J. Sonne and heire of the Feoffor, the Feoffor enters, and takes the profits, without agreement, or contradiction of the Feoffee, and leases to D. for 21. yeares, and yet continues possession, the Feoffee acknowledges a Statute to J. the Feoffor makes a Feoffement, to the use of himselfe for life, the remainder to his second Sonne in taile, &c. and dyes, the Feoffee enters, and infeoffes the Sonne and heire, upon which the second Sonne enters, &c. Resolved, that though the intention was, that the Feoffee should make an estate to him for his life, when he hath entered without agreement of the Feoffee, 'tis a disseisin, and the rather, because, as owner of the land, he tooke upon him to make a

Lease for yeares. Resolved, that by the Lease by Indenture, he hath dispensed with the condition, during the terme. Resolved, that when the Feoffor disseises the Feoffee upon condition, and the Feoffee acknowledges a Statute, &c. This is no disability, to cause the Feoffor to enter, for the right of the Feoffee, is not subject to the Statute, but when the Feoffee in possession takes a wife, grants a rent, or acknowledges a Statute, the land is presently subject, &c. And though upon entry he may be disabled, yet, till then he is not, because the wife may dye, or the Statute be released, and then he may enter, and performe the condition; and the Feoffor by his feoffment hath extinct the condition, so that the Feoffee may enter, and when he hath infeoffed the eldest Sonne, he hath done well.

Westcots Case in Communi Banco. 41. El. fo. 60.

IF a man make an estate to three, and to the heires of one of them; one of them in this case hath Fee simple, and yet the joynt estate continues, for it is all one estate, created at one time, and therefore the Fee simple cannot drowne the joynture, which taketh effect with creation of the remainder in fee; but when three joyntenants are for life, and after one of them purchase the Fee, or else the Fee descends to him, there the Fee simple doth drowne the estate for life, for the estate for life was in esse before.

Note, By this resolution, if tenant for life grant his estate to him in the reversion, and a stranger, 'tis a surrender for the moiety, and the benefit of survivor not regarded; so the doubt in 7. H. 6. well resolved. Resolved, upon view of three presidents, that judgement should be given for the plaintiffe, upon a demise made by husband and wife, without alledging it to be by Deed.

Tookers

Tookers Case, 43. Eliz. fo. 66.

John Arundell seised of Lands in Fee, maketh a Lease thereof to A. and B. for their lives, and after grants the reversion to C. for his life, to which grant A. doth attorne being joynt tenant with B. and after A. by his Deed doth surrender to C. all his estate, title, and interest, &c. and then dyeth; C. entereth, claiming to hold in common with B. and whether his entree was lawfull, or no, was the question, and judgement was given, that it was lawfull, for the attournement of the one tenant for life, shall vest the entire reversion in the grantee, because the estate of the joynt Lessees is entire, and every joynt tenant is seised *per my, & pro tout*, and by consequence the reversion, which is dependant and expectant upon this estate is entire also, and the attournement of the one joyntenant is the attournement of both. Attournement is a lawfull act: if one joyntenant assigne Dower, 'tis good. Also, the attournement passes no interest from him that attournes, but perfects the grant of another. And if one joyntenant give seisure of rent that shall binde the other, but in a *quid juris clamat*, or *quem redditum reddit*, or *per que servitia*, one joyntenant shall not be permitted to attourne without his companion, for doing of prejudice to his companion. By *Popham* one joynt tenant, may prejudice another in the personalty, but not in the realty; if one take all the profits, or release a personall action, the other hath no remedy, because of the privacy and trust between them, and the folly imputed to him, to joyne with such a companion.

Note, if a tenant have notice of the grant by a stranger, and doe give his assent thereunto, it is a good attournement, although it be in the absence of the

grantee, but disagreement, ought to be to the party himselfe, or doe atturue for any part, it is good for the whole, for the intent of an atturment is but onely an assent to perfect the grant of another, and he which atturues cannot apportion, divide, or alter the grant.

Lord Cromwells case, 40. of the Queene. fo. 70.

BLunt bargained, &c. the Mannor of *Alexton*, to which the Advowson of A. was appendant, by Indenture, to have, as after in the same Indenture is mentioned, and B. covenanted to suffer a common Recovery, to the use of *Andrewes* and his heires, rendring 42. pounds *per annum*, to B. and his heires, with a *nomine pena*. And further, 'twas covenanted, and agreed, as well, for the assurance of the Mannor to A. as of the rent to B. that B. should levie a Fine, &c. to A. and his heires, and A. by the same Fine, should render a rent of 42. pounds *per annum*, &c. *Provided alwayes*, that A. by Deed, should give the Advowson, &c. to B. during his life, and if it did not become voyd, during his life, one turne to his executors, &c. And further, 'twas covenanted, and agreed, that all assurances afterwards to be made, should be to the use of this Indenture, &c. after a recovery was had, add after B. and A. levie a Fine to *Perkins*, and he renders a rent of 42. pounds to B. and the Mannor with the Advowson to A. A. dyes, without granting the Advowson, and B. did not request it, B. enters for condition broken, and by Indenture inrolled, bargained, &c. to the Lord *Cromwell*, by which he entered, and upon the reentry of the Sonne and heire of A. brought an Assise.

In this Case is shewed when this word (proviso) or (provided) maketh a condition, and when not, which

which upon long debate was adjudged by all the Justices of England.

It was adjudged that the Law hath not appointed any place in a deed or instrument, proper or particular to a condition, but in what place it pleaseth the parties, and this word (proviso or provided) is as apt a word to make an Estate conditionall, as *Sub conditione*, or any other word of condition, but notwithstanding when this word proviso maketh an Estate or interest conditionall, three things are to be observed.

First, That the proviso doe not depend upon another sentence, nor participate thereof, but stand originally of it selfe.

Secondly, That the proviso be the word of the Bargainor, Feoffor, Donor, Lessor, &c.

Thirdly, That it be compulsory to enforce the bargainee, Feoffee, Donee, Lessee, &c. to doe an act, and where these concur, it was resolved, that it was a condition, in what place soever it be placed, for *Cujus est dare ejus est disponere*. And although words of Covenant be contained in the same claute of the proviso it selfe, yet (the proviso being in judgement of Law a word of condition) it shall not loose his force, and so it hath been judged, In *Symson et Titterell*, 26. *El.* Serjeant *Bendlowes* demised to *Titterell* certain Lands in *Essex*, for forty yeares, provided alwayes, and it is covenanted and agreed between the said parties, That the *Lessee*, &c. should not alien, and this was adjudged a condition, by force of the proviso, and a Covenant also, by force of th'other words. Also it was adjudged in *Banco Regis* 36. *El.* between the Earle of *Pembroke*, Plaintiffe, and Sir *Henry Barkely* Defendant. The Earle granted the Office of the Lientenantship of the West part of the Forreest of *Fronslewood*, in Com. *Somerset*, to Sir *Maurice Barkely*, Father of the said Sir

Sir Henry in Taile ; provided alwayes , and the said Sir Maurice Barkely for him, &c. doth Covenant to, and with the said Earle , that neither he the said Earle, nor any of his Heires Males , &c. shall cut down any Wood growing upon any part of the premises. And it was resolved by all the Justices of England , upon argument before them at Serjeants Inne, that although the proviso was coupled with the expresse Covenant of the Grantee, and every condition ought to be created by the words of the Grantor, Donor, Feoffor, &c. yet in judgement of Law, this word (provided) was a condition created by the Grantor , although all the residue of the sentence be the words of the Grantee, for (proviso) being an apt word of a condition, the same sentence containeth the words of the Grantor, purporting a condition, and the words of the Grantee comprehending a Covenant.

This word (proviso) when it dependeth upon another sentence, or hath reference to another part of the deed, doth not make a condition, but a qualification or limitation of the sentence or part of the deed, to which it is referred. As in a Lease without impeachment of wast, provided that he shall not doe voluntary wast, grant of a Rent charge, provided that the Grantee shall not charge the Grantor, &c. Resolved, that B. shall have the Rent, notwithstanding that before the *Reddendum*, the use in Fee was vested by the recovery in A. and notwithstanding 'twas objected, that the Rent ought to be limited out of the Estate of the Recoverors, for 27. H. 8. hath an expresse clause. Where divers be seised, to the intent, that one shall have an annuall Rent , the same person be adjudged in possession, and seisin of the same rent, as if a sufficient grant had been made , and so here the intent , being that B. should have the Rent, construction

struction shall be made, *Ut res magis valeat quam pere-*
at. Resolved, that the fine levied by B. and A. to
 P. hath not extinct the condition (and this was the
 great doubt of the Case.) 1. Because by the gene-
 rall Covenant 'tis declared, that all assurances after-
 wards to be made, should be to the uses and intents
 in the same Indenture, and to no other; and the
 Indenture intends that the condition should be saved
 as the Lord releases all his right in the Land, saving
 his Rent. *Putnams Case*, 4. 5. P. and M. *Dyer* :
 Feoffment of a Mannor rendring Rent, and a reent-
 ry, and a Covenant by any Indenture to Levie a
 fine, which should be to the uses and intents of the
 first Indenture, and to no other use, which was levi-
 ed according, with the usuall words of release of all
 his right, yet, resolved that neither the Rent, nor
 the condition was destroyed, and 23. of the Queene,
Tuffers Case, a rent reserved by a fine before, was not
 destroyed by a common recovery, and generall entry
 into warranty, and 34. of the Queene in *Clever and*
Childs Case, adjudged according to *Putnams Case* :
 for the same reason 'twas adjudged in this Case, 14.
 of the Queene, for the Advowson of *Alexton*, for,
Modus & conventio vincunt legem, and Covenant and a-
 greement of the parties hath power. First, to raise a
 use. Secondly, to declare uses upon fines, recove-
 ries, &c. Thirdly, for to preserve Rents and condi-
 tions, and for to direct recoveries, fines, &c. and the
 saving may be contained in another deed, delivered
 at the same time, And these common assurances, as
 fines and recoveries, are to be construed, according
 to the intent and common usage, without prying in-
 to them with Eagles eyes. Also, here the Bargaine,
 &c. recovery, &c. fine, &c. though made at severall
 times, yet, all by mutuall agreement, are but one as-
 surance, and tend for to perfect a bargaine, &c. and
 there-

therefore the one shall not destroy the other, resolved, that except in speciall cases a fine, *Sur grant & render*, cannot be averred by word to another use, then is in the fine, feoffment, &c. yet in some cases, it may be ruled in part by averrement, by word, when the originall contract is by deed; but a man may by word averre another consideration, which stands with the consideration expressed, but not against it: Reade the Booke at large for this purpose.

Resolved, that by the death of A. the condition was broken, for when the Feoffee or Grantee is to doe an act to the Feoffor, &c. upon condition, and no time is limited, regularly, the Feoffee may doe it at any time during his life. If the Feoffor or Grantor doe not hasten the same by request, and upon request and day or time limited, the Feoffee or Grantee ought to doe it accordingly: and if no request be made, and the Feoffee or Grantee that ought to performe the condition dye, the condition is broken. Yet, this generall rule admits an exception, for, here in case of an advowson, he hath not time during his life, though no request be made, but upon contingency, to wit, if no avoydance fall in the meane time, for if the Grantee stay till the avoydance fall *Ipsa facto*, the condition is broken, for B. cannot have all the presentations during his life, which was the effect of the grant, and the Advowson is come into another plight then twas. But where the day is certaine for the performance, and the party dye before, the condition is discharged, because the performance is become impossible by the Act of God, and therefore when a day certaine is appointed, tis good that the Heire of the, Feoffee be named in the condition. Another diversity was also agreed, when tis to be performed to a stranger, he ought to request the stranger in convenient time
for

for to limit a time when it shall be done, but if it be to the Feoffor himsele, he ought not to performe it, before request. Another diversitie was taken by some, when the feoffee dyes, and when the feoffor dyes, for in the one case the condition is broken, in the other not.

Binghams Case, 43. of the Queene, fo. 91.

R. *Bingham* the Grandfather held the Mannor of B. M. of Sir *Jo: Hovseley*, as of his Mannor of H. and levied a fine to the use of him, and his Wife for life, and after of R. the Father, his Sonne and Heire, in teile, and after to the right Heires of the Grandfather, R. the Father dyed, the remainder in taile disced to R. his Sonne within age. Sir I. H. suffered a recovery of the Mannor of H. to the use of himsele and his Wife, in taile, and after to Sir R. H. his Sonne and Heire in taile, after to the Heires of Sir I. Sir I. and his Wife dyed without issue, Sir R. enters, R. B. the Grandfather, dyes, by which the reversion in Fee disced to R. B. the Wife of *Robert* dyes, R. within age enters and Leases, &c. Resolved, that the use limited to the right Heires of the Grandfather, upon the fine, is a reversion in the Grandfather, expectant upon the taile, not a Remainder, so twas resolved in *Fenwick* and *Mitfords* Case, and so twas resolved in the Earle of *Bedfords* Case. Resolved, that Sir R. H. shall not have the ward of the Land, for the reversion in Fee is holden of him, and not the Taile; though both disced from the same Ancestor, for the taile cannot be drowned, and if Tenant in taile grant over the reversion, he shall hold the Taile of his Grantee, and though the Seigniorie of the taile be suspended, yet the Donee hath two distinct estates, and the reversion is as a Mesne, betwixt the Donee and the Lord,

Lord, and the Lord is not defeated ; for the Law gives no wardship in such cases ; and if it were admitted, that by the unity of Tenure, betwixt the Donee and reversion, twas determined , yet nothing shall be holden of the Lord , but the reversion, and in some cases , the Donee in taile shall hold of no body, as a gift in taile , the remainder to the King. Retolved, if the Grandfather were Tenant for life , the remainder to the Father in taile , the remainder to the Father in fee, the Father dyes , his Heire within age, and Sir I. H. grants the Seigniorie to Sir R. H. and the Grandfather dyes , that Sir R. H. shall not have the ward of the Heire, because R. the Father did not hold of him, nor any of his Ancestors , the day of his death , nor the Taile was not within the fee and Seigniorie of Sir Ra. or any of his Ancestors, at the death of R. the Father ; and the Writ saith, *Præcipe, &c. Eo quod terram illam de eo tenuit, die quo obiit.* And though that during the life of Tenant for life, the Heire of the remainder shall not be in ward, because Tenant for life, is Tenant to the Lord, yet the death of Tenant for life is not the cause of ward, but the removing of an impediment, as in *Paget and Caries Case*, Tenant for life commits wast, and after Tenant for life in remainder dyes , he in remainder in fee shall have wast. Twas said, when two accidents are required to the consummation of a thing, and the one happens in the time of one , and the other in the time of another, neither the one nor the other shall have benefit by it ; as the Tenant ceases for a yeare, the Lord grants his Seigniorie, and then the Tenant ceases for another yeare, neither shall have a *Cessavit*, which was agreed. So *Lacies Case. Trin. 25.* of the Queene, who gave a mortall wound upon the Sea, of which the party dyed upon the Land, yet he was discharged , because the stroake was upon the Sea, the

the death upon the Land, so that neither the Admirall nor a Jury, can inquire of it : and twas said, when diverse accidents are required to the consummation of a thing, the Law more respects the Originall cause, then any other. A man presents to a Church in time of Warre, notwithstanding the party be instituted and inducted, *Tempore pacis*, all is voyd. So the Law more respects the death of him in the remainder, the Originall cause of wardship, then the death of Tenant for life, which is but *Causa sine qua non*, and rather a removing of an impediment, then a cause, so twas resolved that neither the one, nor the other shall have the ward. Resolved, that Sir R. should not have the third part of the Land, by 32. & 34. H. 8. for though R. the Grandfather had limited the use to the Father, which is within the Statute, yet when R. the Father dyes, in the life of the Grandfather, the Statute extends no further, for the Heire of the Father, who is in by discent, shall be in ward by the common Law, not by the Statute, and if the Statute should extend to the Son and Heire of him in remainder, by the same reason it should extend to all the Heires of him in remainder, *In infinitum*.



THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

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IN TWO VOLUMES

VOLUME THE FIRST

CONTAINING

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FROM 1625 TO 1649

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VOLUME THE FIRST

THE THIRD BOOK.

The Marques of Winchesters Case.

25. of the Queene. fo. 1.



Jonell Norris and *Anne Mills* were seised of the Mannor of *M.* and to the heires of the body of *L.* a common Recovery is had against *L.* (without naming *Anne*) *H. Norris* being in remainder in taile, is executed for Treason, and 'tis enacted that he shall forfeit Manuors, &c. uses, possessions, offices, rights, conditions, and all other hereditaments, *L.* dyed without issue, *Anne* dyed, the Queene brought error against the Marques of Winchester, heire of the survivor of the recoverors, the error was, that the originall Writ of entry wants, the defendant pleaded, that 14. of the Queene, shee gave and restored to the Lord *Norris*, Sonne and heire of *H. Norris*, the Mannor *ex speciali gratia*, &c. and all her right, estate, title, claime, &c. Resolved, that the Record was well removed by the Writ of Error, which was for to remove the recovery of the Mannor of *M.* in *M. cum pertinentiis*, and the Recovery was of the Mannor of *M. cum pertinentiis*. Resolved, that this Writ of Error, was not given to the King by any of the words of the Statute of 28. *H. 8.* because the terrtenant is in by title, and the entry of the person attainted taken away; and such a right, for which the party hath no remedy, but by action, is a thing consists in privy, which cannot Escheate, nor be forfeited by the common law; and this word (right) in the Act, shall be satisfied with a right of entry, and 'twas observed by the Court, that by no Act of attainder, a right of action was ever given.

E

Note,

Note, a diversity betwixt inheritances, and chattells ; for Obligations, Statutes, Recognisances, &c. are forfeited by attainder or Outlawry. By the Court, if L. had made a Feoffment without warranty, this had been a discontinuance of the moiety, for the joynture was severed. Resolved, that *H. N.* had no right to a moiety of the Mannor, for though the recovery were erroneous (for 'twas agreed, 'twas not void) yet the recovery being in force, the remainder hath no right, for the intended recompence, if tenant in taile suffers an erroneous recovery, and disseise the recoveror, and dye, his issue shall not be remitted, for the taile is barred, as long as the recovery stands in force ; and the Court agreed, that neither an action without a right, with a discent, shall make a Remitter, as in the principall case, nor a right without an action, for a man shall never be remitted, but when an action lyes, if the right and possession were in severall persons. Resolved, for the one moiety, the Recovery shall be a barre to the taile, and remainder, for, though that as well L. as the vouchee might have abated the Writ, because, *Anne* was joyntly seised, not named, yet, when the vouchee, without demanding any Line, enters generally into warranty, & admits the Writ good, and L. recovers in value, which shall inure according to his estate, with the remainder over, 'tis barred, for by the recovery against L. the joynture was severed, but, for the other moiety, the recovery was not a barre to the taile, or remainder, because, for that L. was not tenant to the *Præcipe* ; but the recovery is by *Estoppell* onely. Agreed, that *H. N.* at the time of the attainder, was not intitled to have error, yet 'twas agreed, that the remainder upon a taile shall have error, upon a judgement given against tenant in taile, for when *W. 2.* inables the donor for to limit a remainder over upon the taile, all actions which the common law gave to privies in estate are by the same Act, as incident,

dent, given also ; as a reversion, or a remainder, shall have Error upon a judgement given against tenant for life, though not privie by aide voucher, or receiver. But agreed, that by the common Law, Error doth not lye by, &c. during the life of tenant for life, except he were privy to the first Record by aide, voucher, or receiver, for remedy whereof 9. R. 2. ca. 3. was made, which gives an attainr or error, during life, upon which Statute the Court resolved, 1. that though the Statute speakes onely of reversions, yet remainders are within the purview, 2. That a reversion expectant upon a taile, is our, for the Statute enumerates these foure estates ; Life, Dowor, Courtesie, and Tenant in taile after possibility, which declares their intentions to exclude reversions upon tailles, & this upon great reason, for the taile by possibility, may continue for ever, and here L. survived H. N. and so his possibility of error destroyed, and no word of the Act extends to give a possibility. Resolved, admitting the Writ of Error had been given to the Queene, that by this generall grant of the Queene, it did not passe ; for a common person cannot grant it, and therefore it ought to passe by Prerogative, & ought to have precise words : adjudged in *Cromers case*, 8. of the Queene ; the Queene having a right of a disseisee attainted, grants *de speciali gratia*, &c. all lands, &c. The right doth not passe, without speciall recitall, and words. *Owen and Morgans case*, Trin. 27. of the Queene ; Baron & Feme are seised, and to the heires of the body of the husband a recovery is had against the Baron sole, without naming of the wife, & after the wife dyed.

Resolved, that though the wife were not party to the Writ, nor the Conisance (for the estate of the husband and wife, was by render upon a Fine levied by the husband) and though it does appeare within the same Record, that she was a stranger, yet the render to her is voidable onely. Resolved, that this recovery against the

husband onely, shall not binde the remainder, for betwixt husband and wife, there are no moities, and the husband hath no power to sever the joynture, or dispose any part, and he, during the life of the wife, is not seised by force of the taile: and he can, by no Act, execute any part; so the *Pracipe* being brought against him onely, the recompence cannot enure to the taile, or remainder, for, to all, it cannot, for the wife hath a joynt estate in possession, and for a moiety it cannot, for there are no moities, and the remainder depends upon the entire estate, and recompence recovered by the husband onely, cannot inure to him, who hath a remainder depending upon the undivided estate of the husband and wife, and the joynt-tenancy cannot be severed by the judgement against the husband onely, and though the husband hath all the inheritance, yet, because, by no possibility, it can be executed, 'tis all one, as if the husband had a remainder depending upon an estate for life, and then a common recovery shall not binde, because, not tenant to the *Pracipe*, nor seised by force of the taile, but tooke effect by Estoppel onely. The issue may say, his ancestor was not tenant *tempore brevis*, and though here the husband survived the wife, this is not materiall, for the Law adjudges as 'twas then.

Copledikes Case, 44. of the Queene. fo. 5.

C And his wife were seised, and to the heires males of the body of the husband, the husband levies a Fine to A. B. recovers in a Writ of entry against A. who vouches the husband onely (the wife living) who vouches the common vouchee. Resolved, that this recovery shall binde the remainder, for here was a lawfull tenant to the *Pracipe*, & though the husband were onely vouched, and not his wife, who had a joynt estate with

with him, yet the husband coming in as vouchee, he came in, in privy of the estate taile, and not of another estate, and the recovery in value gives recompence to the taile, which the husband had, and to the remainder. A. tenant in taile, the remainder to B. the remainder to C. the remainder to D. A. makes a Feoffment, the feoffee suffers a recovery, B. is vouched, & he vouches the common vouchee; A. is not bound, but B. and all the remainders are, for though the remainders are discontinued, and cannot be remitted, till the taile be recontinued, yet in a common recovery, which is the common assurance, he which comes in as vouchee, shall be in judgement of Law, in privy of the estate, which he ever had, though the precedent estate, upon which the estate of the vouchee depends, be discontinued, so, here the husband shall be said in of the taile, and 'tis the stronger, because the estate of the wife was put to a right, so, that the husband came in as sole tenant in taile, and not joyntly with his wife, because, she is not vouchee, and he cannot be in of another estate, because, once he had a taile, but had they had a joynt estate to them, and the heires of their two bodies, he being onely vouched, it might be doubted, whether the taile should be barred, because the wife had a joynt inheritance with him. 8. of the Queene, *Dyer, Knivertons case*, A *Præcipe* is brought against tenant for life, and the remainder in taile, they vouch over, it shall not binde the taile, for the remainder is not tenant to the *Præcipe*, and the land is recovered against the tenant for life onely, and recompence shall not goe to the remainder, and the remainder was never seised by force of the taile, and so 'twas adjudged in *Leach and Coles Case*, 41. of the Queene.

Heydons Case, 26. of the Queene. fo. 7.

THE Gardians and Cannons Regular of the late Colledge of O. seised of the Mannor of O. granted a

Copy-hold to Father and Son for their lives, &c. and after they leased it to *H.* for fourescore yeares, rendring the ancient Rent, & after surrendred their Colledge. Resolved, that the lease to *H.* was voyd (the Copi-hold for life continuing) by the Statute of 31. *H. 8.* For Copi-hold is an estate for life, and the Statute saith (of which any estate or interest for life, &c.) at the making of such grant had continuance : reade the Booke at large, where you have admirable rules, for true interpretation of all Statutes. Resolved, when a Parliament alters the service, tenure, interest of the land, &c. in prejudice of the Lord, custome, or tenant, the generall words shall not extend to Copi-holds ; as the Statute of *W. 2. de donis conditionalibus*, doth not extend to them, for if the Statute should alter the estate, this should also alter the tenure, for the donee ought to hold of the donor, and to doe such services (without speciall reservation) as his donor did to the Lord, and the intent of the act was not to extend to such base estates, which were taken then but tenants at will, and the Statute saith, *Voluntas donatoris observetur in carta*, &c. So that which shall be intailed, ought to be such an hereditament, which may be given by Charter, and great part of the land within the Realme being granted by Copy, it would be inconvenient, that Copi-holds should be intailed, yet, neither Fine, nor Recovery should barre them, so that the owner cannot (without making a forfeiture, by assent of the Lord, and a new grant) dispose of it for payment of debts, advancement of his wife, or younger issues, wherefore the Statute doth not extend to them by *M. wood, Ch. Baron*, which the Court agreed. But 'twas objected ; that the Custome and the Statute co-operating, might make a raile, as if by a custome, a remainder had been limited over, and enjoyed, & plaints in nature of a *Formedon in descender* brought, and the land

land recovered by it ; so neither the custome without the Statute, nor the Statute without the custome can make a taile. And *Littleton* saith, that if a custome hath been, that lands, &c. have been granted, &c. or in taile, &c. *& paulo post*, that a *Formedon in discender* lyes of all tenements, which Writ was not at common law. *Manwood* answered, if the Statute doth not extend to them, without question, the custome cannot, for before the Statute, all estates of inheritance were fee simple, and no custome can commence after the Statute, for this being made 13. E. 1. is made within time of memory; and *Littleton* is to be intended of a fee simple conditionall, for he knew well that no custome could commence after the Statute of W. 2. as appears in his booke 2. ca. 10. and 34. H. 6. and a *Formedon in discender*, in speciall cases, lay at the common law. And by the Court, another Act made at the same time, which gives an *Elegit*, extends not to Copi-holds, for the reason aforesaid ; but other Statutes made at the same time extend to them, as ca. 3. which gives a *Cui in vita & receite*, and ca. 4. which gives to the particular tenant, a *Quod ei de forceat*. Resolved, that though 'twas not found, that the said rents were the usuall rents accustomed to be reserved within 20. yeares before, yet, because 'twas found, that the accustomed rent was reserved, and a custome goes to all times before, it shall be so intended, without shewing the contrary, and judgement was enterd for the Queene.

The common Law is founded upon the perfection of reason, and not according to any private and sudden conceit or opinion.

Downties case, 26. Eli. An information in the Exchequer. fo. 9.

THe Duke of N. seised in fee of 5. Messuages in St. S. Parish in H. in the tenure of W. G. bargaines & sells his Tenements in the Parish of St. A. in H. in the occu-

56 Sir William Harberts Case. Lib. 3.

Pation of W. G. and is attainted and Executed, Queene *Elizabeth* grants them to I. F. if concealed, the Defendant D. claimeth under that Patent, against whom the Attorney informeth, &c. And Judgement was given for the Queene.

1. Resolved, nothing passeth by the bargain and sale, because the first certainty was false, otherwise it is, if the first certainty be true, and the second false, so the Bargainee was a disseissee.

2. These Lands were not in the Q. by the Statute of 33. H. 8. c. 20. without *Scire facias* or seisure, because the words of the Statute, that Lands shall be in the K. without Office, shall be construed, as if an Office had been found: And Lands of a Disseissee attainted, shall not be in the K. by Office without *Scire facias*, or seisure, also all possessions, &c. are saved by the said Act, as if it had not been made.

3. That the Q. having but a right it doth not passe by the grant of the said five Metuages; and after, a speciall Office was found, and a *Scire facias* brought against the Terretenant, and judgement given, and the Tenements seised into the Q. hands, and she by new Letters granted them to S. and his Heires, who peaceably enjoyed them.

Sir William Harberts Case, 26. Eliz. In the Exchequer, in Error, fol. 11.

M. H. acknowledged a Recognizance of 3000. l. to the K. and dyed, a *Scire facias* issued against his Executors, *& heredes terrarum*, &c. The Sheriffe returned, that he had no Executors within his Bayliwick, and further, that *Scire fecit. W. H. militi, filio & heredi dicti. M. H.* W. H. maketh default, and judgement is given against him generally, and he bringeth Error, but upon his Petition to the Queene, he was admitted to Compound with her. I.

Lib.3. Sir William Harberts Case. 57

1. Resolved at the common Law (except in special Cases) neither Land nor Body were lyable to Execution in Debt or damages recovered, but Execution was to be done by *Fieri facias*, or *Levari facias* of his Goods and Chattels, and profits growing upon his Land, but in debt brought against one, as heir, his Land was lyable to execution, because the Plaintiffe had no other remedy, for the goods belong to the Executors, but the body, goods, and Lands of the K. Debtor or accomprant were ever liable to Execution, but such *Levari facias* or *Fieri facias*, ought to have been sued within the yeare, or otherwise he was chased to his Writ of Debt, and now by *Westm. 2. c. 45.* he may have a *Scire facias*, and by the 18. Chapter of that Statute, an *Elegit* is given of the moiety of the Land, which was the first Act that subjected Land to Execution for Debt or Recognizance, and by the Statute of 13. E. 1. de Mercatoribus 27. E. 3. c. 9. & 23. H. 8. c. 6. In Statute Merchant, and Statute Staple all the Lands of the Conusor at the day of acknowledgement shall be extended, into whose hands soever they shall after come: But in all Actions *Vi & armis*, where a *Capias* lyeth in Proceſſe there after judgement a *capias ad satisfaciendum* lieth, and the K. shall have a *capias pro fine*, and in such cases the Law (the preserver of peace) subjecteth the body to Imprisonment, and by *Marlebridge, c. 23. West. 2. c. 11.* a *Capias* was given in an accompt, the proces before being a distresse infinite, and by 25. E. 3. c. 17. the same proces given in Debt, as in account, for before this Act the body was not liable to Execution for Debt as aforesaid.

2. If Land of the heire be seised in Execution, upon a recognizance of his auncestor, he shall not have, contribution against a purchasor of his Auncestor, although he come in without consideration, & although the Heire be not charged as Heire, but partly as Terrentenant;

58 Sir William Harberts Case. Lib.3.

tenant ; but one purchasor shall have contribution against another purchasor, & one Heire against another Heire, because they are in *Æquali jure*, & therefore the Writ here which issued against the Heires, without naming the purchasor is good, although he be charged as Terretenant : The Heire shall have an *Audita quarela*, as well as the Conusor himselve before Execution sued, and a *Superfedeas*, but a Stranger shall not : If diverse acknowledge a recognizance, the charge doth not survive, and the Land of one shall not be put in Execution, but all their Lands equally : so if two are bound to warranty, both, or their Heires, and the survivor, and the Heire of the other shall be joyntly vouched, and the Land of both shall be rendered in value. But if Baron and Feme, and the Heires of the Feme are bound to warranty, and the Feme dye, the Land of the Baron may be solely taken in Execution, because there are no Moities between Baron and Feme : So that when Land shall be charged by ~~any~~ Lien, the charge ought to be equall, but in a Lien personall, otherwise it is, as if two are bound in an Obligation, there the charge shall survive : But a Purchasor, *Bona fide*, before any Action brought, shall not be subject to any charge. And three Errors were moved in the record.

1. The *Scire facias* was *Hæredi terrarum*, &c. which is improper, for he is not Heire to the Land, but to his auncestor.

2. The Writ is *Scire facias hæredi terrarum*. &c. and the Retourne is, *Scire fecit W. H. militi hæredi prædicti M.* and every Retourne must answer the point of the Writ.

3. The judgement is generall against Sir W. H. where it ought to be speciall, for otherwise his owne Land shall be liable, where, by the Law, the Land onely, which came to him by his Father, ought to be charged,

charged, and he is charged as Terrtenant as aforesaid, but these poynts were not resolved by the Court.

Nota, the new Writ of Error, after entry of the first was not brought, *Quod coram vobis residet*, because the Record is not removed out of the keeping of him who had the custody thereof before.

Borastons Case, 29. of the Queene. fo. 19.

B. Devised land for eight yeares, and after to his executors, to performe his will, till *H.* his youngest Sonne come to the age of 21. yeares, and when *H.* comes to 21. yeares, then, that he shall have to him & his heires, *H.* dyed at the age of 9. yeares. Objected, that till *H.* attaines to 21. yeares, the land descends to the heire and, for that he never attained to 21. yeares, this remains in the heire, and the intent appears by the words, that he should not have, till he come to 21. yeares, and this ought to precede the commencement of the remainder, and if land were leased till *H.* comes to 21. yeares (*H.* then being of 9. yeares) 'tis no absolute lease for 12. yeares, for if *H.* dye before 21. the lease shall be determined, which the Court agreed. 'Twas also said, that when the particular estate, which should support the remainder, may determine before the remainder can commence, there the remainder doth not vest presently, but depends in contingency.

If one make a Lease to *A.* for life, and after the death of *B.* the remainder to another in Fee, this remainder depends upon contingency, for if *A.* dye before *B.* the remainder is voyd. A Lease is made to *A.* for life, the remainder to *B.* for life, and if *B.* dye before *A.* the remainder to *C.* for life; this is a good remainder upon contingency. If *A.* survive *B.* which case is all one with the common case, which is many times agreed on in our Books, a lease is made to one for life,
the

the remainder to the right heirs of I. S. this remainder is good upon contingency, (*viz.*) If the Lessee for life survive I. S. otherwise not, and by the same reason, if a man have issue a Son of 9. yeares of age, maketh a lease untill the Son shall accomplish his full age, the remainder to another in Fee, as in this case, nothing vesteth in him in remainder presently, *Quod fuit concessum per tot. Cur. vide. Chudleyes Case, Libr. 1.*

Answ. that in Wills the intent of the devisor is to be considered; for, when the devisor in his life by apt words, by good advise, might have made his Will sufficient in Law, there, though he makes it in disordered manner, and in barbarous and unapt words, the Law will order those words, which want order, according to his intent, as in *Wellock and Hamonds Case*, Copy-holder in Borough, English devises, to his Eldest Son, paying 40. shillings within, &c. to every of his other Sonnes, &c. surrenders according, and dyes, the Eldest Son did not pay within, &c. the youngest enters, and adjudged lawfull; and resolved,

First, That he had a fee, for the recompence and consideration, though it be not to the value, makes a fee in construction of a will. Secondly, That though paying in a Will, makes a condition, yet, here 'tis a limitation; otherwise it would discend upon the Eldest Son, who is to take advantage of it, and then it should be at his pleasure for to pay, or not, and therefore it shall be, as if he had devised to the Eldest *Quousq;* he failes in payment. So here the devisor hath computed, what profits of his Land, during the nonage of his Son, will suffice for payment of his Debts, &c. and that he did not intend that the tearme of the Executors should end by death of H. for so his Debts should remaine unsatisfied, & his Will unperformed, and therefore the Law saith, it shall be construed, that the Executors shall have till H. should have come to 21. yeares of

of age, and therefore the Executors have a terme for 12. yeares, which the Court agreed. And though (*when*) and (*then*) are Adverbes of time, yet, when they referre to a thing which must of necessity happen, they make no contingency, & tis certain, that H. did accomplish, or might have accomplished the age of 21. yeares, and here, if the rearme should be ended by death, the remainder should be voyd; and the Court agreed, that in Wills, and grants, the remainder ought to vest in possession, *Eo instanti*, the particular estate ends; but, here the Terme did not end, &c.

Walkers Case, 29. Eliz. in Banco regis.

Walker leased certain Lands to *Harries* for years, the Lessee assigned all his interest to another, *Walker* brought an action of Debt against *Harries*, for Rent arreare after the assignement, and if the action be maintainable or not, was the Question, and upon great deliberation and conference with others, it was adjudged *per Wray* chiefe Justice, *Sir Thomas Gawdy*, & *Tot. Cur.* that the Action *did lye*, & was maintainable in the argnment, whereof many things were resolved.

If a man Leate a stock of Cattle or other goods, rendering a Rent at severall dayes, he shall not have an Action of Debt untill all the dayes be expired.

Likewise, if a man make an obligation or other contract to pay severall sums of money at severall dayes, he shall not have an action of debt, untill all the dayes be expired, for these are personall contracts and not reall, but in case of a Lease for yeares, which is a reall contract, the Lessor shall have an action of Debt after every day.

By the Court, Debt doth well lye in this case, against the Lessee, there are three privities. 1. In respect of the estate onely. 2. Of contract onely. 3. Of estate and

and contract together. The first between the Grantee of the reversion, or Lord by Escheate, and the Lessee, so betwixt the Lessor and the Assignee of the Lessee; the second betwixt the Lessor & the Lessee (as here) for, notwithstanding the assignement, and the privity of estate removed by the act of the Lessee himselfe, the privity of contract remaines.

First, because the Lessee himselfe cannot prevent the Lessor of his remedy; but when the Lessor grants his reversion against his own grant, he shall not have remedy, because the Rent is incident to the reversion.

Secondly, the Lessee might grant it to a poore man, not able to manure the Land, or for malice, will suffer it to lye fresh, so the Lessor shall be without remedy, if Debt should not lye against the first Lessee.

Thirdly, there is privity of contract and estate together, as betwixt the Lessor and the Lessee.

If a Tenant in Dower, or Tenant by curtesie, assigne over their estate, yet the privity of the action remaineth between the Heire and them, and he shall have an action of wast against them for wast done, after the assignement, but if the Heire grant over his reversion, then the privity of the action is destroyed, and the Grantee may not have any action of wast, but onely against the assignee, for between them is a privity of Estate, and between the Grantee and the Tenant in Dower, &c. is no privity at all.

If a lessor enter for condition broken, or if a lessee surrender to the lessor, yet the lessor may have an action of Debt, for arrerages due before the condition broken, or the surrender, and this is in respect of the contract between the lessor & the lessee. 36. of the Queen, *Ungle and Glovers Case* adjudged, the lessee assigns his interest, the lessor bargaines, &c. the reversion, the bargainee shall not have Debt against the lessee, but agreed, that the lessor himselfe might.

37. *Eliz. in Banco regis, Int. Overton & Siddall.* Two points were resolved. First, if an Executor of a Lessee for yeares, assigne over his interest that an Action of Debt doth not lye against him for Rent due after the Assignment. If a Lessee for yeares assigne over his interest and dye, the Executor shall not be charged for rent due after his death, for by the death of the Lessee, the personall privity of the contract (as to the Action of Debt) in both these cases were determined; 40. of the *Queene, Brome and Hores Case.* A Lessee of three acres rendring Rent, assignes one to B. the Lessor suffers a recovery to the use of C. in fee, who brought Debt against the first Lessee, adjudged it lyes, for the Lessee assigned his interest, but for part, for the privity of Estate remaines because he assigned but part. 41. of the *Queene, Marrow and Turpins Case,* in Debt against two Administrators, upon a Lease made to their Testator, the Defendants plead, that before the ten a-reare, the one of them had assigned all his interest to I. S. of which the Plaintiffe had notice, and accepted the Rent by the hands of the assignee, due after the assignment, and before that this rent now demanded was due, the Plaintiffe demurred and adjudged against him, because the privity of the contract was determined by the death of the Lessee, and therefore after the assignment made by the Administrator, Debt doth not lye for rent due after the assignment. Also it was said, that if a Lessee assigne over his terme, the Lessor may charge the Lessee or his Assignee at his Election. And if the Lessor accept the rent of the assignee, he hath determined his Election, and shall not have an action after against the Lessee, for rent due after the assignment, no more then a Lord having received the Rent of the Feoffee, shall avow upon the Feoffor afterwards.

Butler and Bakers Case, 33. and 34. of the Queene. fo. 25.

WB. and his Wife seised of the Mannor of H. (by an Estate made to them during coverture for the joynture of the Wife) in taile, holden *In Capite*, and W. seised of Land in F. both which amount to a third part of all his Lands; and also of the Mannor of T. *In capite*, which amounts to two parts; W. devises T. to his Wife, upon condition, that she should take no former joynture, and dyed, the Wife in pay refused H. the question was, whether the Will were good for the entire Mannor of T. or but for part by the Statutes of 32. and 34. H. 8. Resolved, that at common Law if a gift be to a Husband and Wife in taile, &c. the Husband dyes, the Wife cannot deuest the free hold by any verbal Waiver, or disagreement in *pays*; as if she say before entry, that shee will never agree to it, she may enter when she pleases; so, if she saith, (reciting her estate) that she assents, &c. to the said estate, yet afterwards she may waive it in a Court of record; but if she enters into the Land, and takes the profits, though she saith nothing, 'tis a good agreement in Law, for the Law more respects acts without words, then words without acts, & a freehold shall not be so easily devested to the intent that the tenant to the *Præcipe* should be the better knowne. But as an act in *Pays* may amount to an agreement, so it may amount to a disagreement, but this is alwayes of one & the same thing, if the tenant by deed infeoffe the Lord, and a stranger and maketh livery to the Lord, if the Lord disagree by word, 'tis worth nothing, and if he enters generally, and takes the profits, 'tis an agreement, but if he distraines for his Seigniorie, 'tis a disagreement, yet in some cases, a claime by words shall direct the entry to be an agreement to one Estate, and a disagreement to another, &c. See the Booke at large, but a man may deuest

deveſt the property of goods and Chattells, or an obligation ſealed to him, by diſagreement *In pays*.

Reſolved, that though the eſtate was created by way of uſe, which uſe, before the Statute, might have been waived in *Pays*, yet, now the Statute hath ſo incorporated the uſe and poſſeſſion of the Land, that it cannot be waived *In pays*, more then an Eſtate created by feoffment, &c. yet twas here reſolved, That the reſuſall *In pays* to have H. and the entry, and agreement to T. was a good agreement to the one, and diſagreement to the other. And this by 27. H. 8. ca'. 10. *If any Woman hath Lands, &c. aſſured after Marriage, &c. after the death of the Husband, Shee may reſuſe her joynture, and take her Dower, &c.* And upon theſe words the Court agreed, That a Woman might reſuſe her Joynture *In pays*, and be in-dowed by conſent or Writ. The great doubt was, if by this reſuſall of H. by operation of Law, it doth diſcend immediatly to the heire after the death of the Deviſor; for to ſatiſfie the Statute which ſaith, *The King ſhall take for his third part ſuch Mannors, &c. as ſhall diſcend, &c. immediatly after the death of the deviſor.*

Reſolved, Firſt, Upon the reaſon of the common Law, the reſuſall ſhall not have ſuch relation that the deviſe ſhall be good, for the intire Mannor of T. for a relation is a fiction of Law, to make a nullity of a thing *Ab initio*, to one certaine intent, which in truth had being, and that *Propter neceſſitatem, ut res magis valeat, quam pereat.* 11. E. 3. The Law will make a nullity *Ab initio*, that the Wiſe ſhall have dower, but not as to a collaterall intent, as if the reverſion were granted of the Lands which the Husband & Wiſe held in taile, and the Wiſe for to have Dower diſagrees, yet the grant is good, for ſhee may be endowed though the grant ſtand; and *Relatio eſt fictio juris, & intenta ad unum*: And though relations aide acts in Law, as Dow-

er, yet twill never aide the acts of the party, to avoyd them by relation, as a man infeofes an Infant, or Feme covert, and after gives, &c. or devises the Land, or any thing out of it, the Infant or Husband disagrees, this shall have relation betwixt the parties, that the Infant or Husband, shall not be charged in damages, but shall not make the voyd devise, &c. good. A Lease for life, the remainder to the King, the King grants his remainder, the deed is inrolled, it shall have relation to make this passe *Ab initio*, to the King, not to make the voyd patent good. And as relations extend onely to the same thing, and the same intent, so, also to the same parties, not for to prejudice a Stranger, feoffment of a Mannor, and a long time after livery, the Tenants attourne, this shall have relation, to make the services passe *Ab initio*, or otherwise they could never passe, nor be parcell of the Mannor, but not for to charge the tenants for the arrerages in the mean time. So here, the refusall shall relate as to the mannor, of H. onely, nor to T. and to the wife onely, but not to prejudice the Heire (upon whom part of the Mannor of T. descended) to make the devise good for the third part, which was voyd at the time of the death: For, *Omne testamentum morte consummatum est*, and as it was at the death, so it shall remaine. Resolved, that after the Statute of 27. H. 8. and before the Statute of 32. H. 8. the Mannor of T. was not devisable, & therefore when the devisor hath not pursued the authority, which the Acts of 22. & 34. H. 8. gives, twas voyd for part.

The first branch he hath not pursued, which saith, (*That all, &c. having a sole estate in fee simple, in any Mannors, &c. shall have full and free liberty, &c. to dispose by his last Will in writing, as much of, &c. as shall amount to the cleere yearly value of two parts in three to be divided.*) For he had not the Mannor of H. for his Wife had it joyntly with him. See many excellent Cases in the Booke

Booke at large, adjudged upon this word (*Having*) in the Statutes, the *Initium* of a Will ought to be full and perfect, which is the writing, and therefore, if the devisor command one to write his Will, and he devises white Acre to A. and his Heires, and black Acre to B. and his Heires, and dyes, before the devise to B. is writen, yet the devise to A. is good. But if he devises to A. &c. upon condition, and he writes the devise, and the Testator dyes before the writing of the condition, it is voyd, for in the one case, the devises are severall, and the one is perfect, in the other Case tis maimed, and imperfect, for the intire devise, was not fully put in writing, so twas resolved in the Case at Barre, that neither the commencement, nor the end of the Will was full or perfect, for at the time of writing of it, and at the death of the devisor, he had no power in respect of the joynt estate in H to dispose all the Mannor of T. which amounts to the value of two parts of all. Also, upon the first Branch he ought to have a sole estate, and here his Wife is joyntly seised with him, and she cannot disagree during coverture. The Statute gives liberty to him, for to devise two parts by will, but this is to be intended of such Land, which he might convey by act executed, but, here by reason of the undivided estate of the Wife, he cannot dispose it but during coverture. Also, the third part of cleere yearly value is saved to the King, and the intent of the Statute was, that the King shall have the equall benefit at least for his third part, as the devisee hath for two parts, but here the devisee had two parts absolutely, and the King but a possibility, viz. If the Wife would disagree which is at her pleasure, and this Statute hath been constru'd, that equaliry should be observed. A man which held three Mannors of three Lords, could not devise two of them, but two parts of every one; upon these words (*Cleere yearly value*) twas

said that of Inheritances, which are not of any yearly value, some are devisable, some not, as *Bona & catalla felonum, fugit: or ut lagat.* Fines, amerciaments, within such a Mannor or Towne, these cannot be devised, nor left to discend, but a *Leete, Waife, or Stray*, or other hereditament appendant, or appurtenant to a Mannor, passe by devise of the Mannor with th'appurtenances as incidents, and the Statute had no intent for to dismember these things, which by lawfull prescription had been united. But if a hundred, with goods of Fellons, Outlaws, Fines, Amerciaments, returne of Writts, and such other casuall hereditaments, within the same hundred, have been accustomably demised for a yearely rent, they may be devised within the purview of the said Act. 'Twas said upon the words of the Statute, which says, that he may devise a rent common, &c. *Out of two parts*, that a devise of a rent of the full value out of all is voyd, but out of two parts 'tis good. And 'twas observed, that upon 32. H. 8. a devise of all his land, had been good for two parts, as adjudged in *Umtons Case*, for Land is severable, but a rent is a thing intire, and 34. H. 8. onely gives authority for to devise it.

The second branch which speakes of division, cannot be satisfied, for, during his life, he himselfe could not (*Set it out*) and after his death, it survives to the Wife. The third and fourth branch is not satisfied in this word (*immediatly*.) for till disagreement, without question the Mannor of H. survived to the Wife, and if an Office had been found before disagreement, without doubt, the Queene should have a third part of the Mannor of T. and the devise being voyd at the death of the devisor, and the third part lawfully vested in the Heire by discent, it cannot be made good and de-vested by a subsequent disagreement. *Liuleton*, discent to the Heire of Tenant by the courtesie of a disseissee,

resse, doth not take away entry, for the Heire comes not in immediatly, and 'twas agreed if a man devises two acres holden by Knights service, and a reversion upon a Lease for life descends to the Heire, this is no immediate descent within the Statute, but the third part of the two ought to descend; see many excellent Cases of devises adjudged upon the Statute.

Another good Case of relations, *Jennings and Braggs Case*, a disseisee makes an Indenture purporting a Lease for yeares, and delivers it to a stranger, out of the Land, as an Escroule, and commands him for to enter, and deliver this as his deed, to the Lessee, who doth it, and adjudged a good Lease, and this diversity agreed.

First, When the person at the first delivery hath not ability, to make the contract, and before the second delivery hath, 'tis voyd, as an Infant, and a Feme covert; otherwise, when at first delivery, the person hath ability, but cannot perfect it, till an impediment removed, which is done before the second delivery, there 'tis good, as at Barre.

Resolved, secondly, that to some intent the second delivery shall have relation to the former, by fiction of Law, *Ut res magis valeat quam pereat*, as if a Feme sole deliver a Lease as an Escroule, and after takes Husband or dyes, yet by the second delivery 'tis a good deed *Ab initio*; and to some intent *Ut res magis valeat, &c.* it shall not relate, yet in truth, the second delivery hath all its force by the first, and is but an execution and consummation of the former, as at Barre, for if it should relate to the first delivery, then it would avoyd the lease, for it should be made by one, who was out of possession, *Et scilicet legis inique operatur alicui damnum vel injuriam.*

Thirdly, 'twas resolved that as to collaterall acts, that there shall be no relation *Omnino*, as if the Oblis-

gee release before the second delivery, such release is voyd.

Ratcliffes Case. 34. of the Queene. fo. 37.

A Feme sole devises Socage land to the sonne of her daughter in taile, the remainder to two Sisters of the devisee, and to the heires of their two bodies, by equall portions to be divided, the remainder in fee to the Mother of the daughters, and dyes, the sonne dyes without issue; *Martha* one of the daughters dwelling in her Mothers house (daughter of the devisor) within the age of 16. and above 14. departed at the second houre in the night, with the consent of the husband of her Mother (in whose house she was) 8. miles, and there married *E. R.* the issue was, whether *E. R.* the Mother, had the custody of the said *M.* at the time of the contract, and marriage aforesaid, for if she had, then the land of *M.* was lost by the Statute of 4. and 5. *P. and M. ca. 8.*

Resolved, that there were two manners of custodies, or Gardianships, the one by the common law, the other by the Statute; at common Law foure manner of Gardians, *viz.* Gardian in Chivalry, Socage, Nature, by Nurture. The first two are fully described in our Bookes; but great controversie was at barre, for Gardian by Nature; Some held, that the Father onely shall have the custody of his sonne and heire apparent, within age, not the Mother, Grandfather, &c. Also, that the Father shall not have the custody of his daughter and heire, for it ought to be such an heire, as shall continue sole and apparent heire; as the Father shall not have the custody of the youngest sonne, in Borough English, for tenure in Chivalry. Others affirm, that not onely the Father, but every auncestor male or female, shall have the custody of his heire apparent,

parent, male or female. Trespas *quare* *h*, *consanguinitum* & *heredem* of the plaintiffe, *cujus maritagium ad ipsum pertinet*, &c. *rapuit*, &c. lyes The Mother (though she had no land) brought ravishment or ward of *j*. her Sonne and heire, against the grand-father, who had land that might descend. By the Court, both erre; for 'tis true, that every auncestor shall have trespas, or ravishment of ward against a stranger, for his heire male or female, and the Writ shall say, *Cujus maritagium ad ipsum pertinet*, and good reason, for the establishment of his house consists upon providing of a convenient marriage for his heire apparent, & it matters not, of what age such heire is, but such action lyes not against gardian in Chivalry, by any of his auncestors but the Father. So the Court resolved here, the Mother could not be gardian in Socage, if the land had descended to the daughter, nor by nurture, because she was above 14. but the common Law gives remedy against a Stranger, as aforesaid. Resolved, here the Mother shall have the custody within the provision of the Act, which hath ordained two new manners of custodies. 1. By reason of nature. 2. By assignation; the first, the Father, after his death the Mother; the second, by assignation of the Father, by his will, or any act in his life. See the Booke at large for the exposition of this Statute.

Resolved, that the assent of the husband was not materiall, for the Statute hath annexed the custody, to the person of the Mother, *jure natura*, which is inseperable, and by marriage cannot be transferred to the husband, the Father shall not forfeit the wardship by outlawry, nor shall his Executors have it.

Resolved, though she departed out of the house six houres before the contract, yet, in judgement of Law, the Mother had the custody at the time of the contract; for, 'tis inseperably annexed to the person of the Mother.

Resolved, that by this devise, the two daughters were tenants in common in taile, by these words (*equally to be divided*) though they never make partition *in facto*, and so it hath been often adjudged.

Resolved, that the husband and wife damsell, had good title upon this verdict, against the other daughter; for, by these words (*to the next of kin, to whom the inheritance should, &c. come after her decease during the life of such person, who shall so contract, &c.*) it seemes the daughter shall not have the forfeiture, for though she be of the blood, yet, if M. dye, her issue shall have the land, if without issue, the Mother in the remainder.

To the objection, that the Mother cannot have it, for she is not of the blood of the daughter; but *contra*, Father, or Mother, are not next, to whom administration shall be granted; and land shall escheate, rather then it shall goe to Father, or Mother.

Resolved often against 5. E. 6. that the Father, or Mother, are next to whom administration may be granted, and Littleton says that the Father is neerer of blood, then the Uncle, and therefore the Father shall have a remainder limited to the next of blood of the Son, but he shall not have an inheritance by descent, from the Son, for a *Maxime* prohibits it. And 'twas said at barre, if he in reversion had been brother of the halfe blood, he might have entered, as *Proximus de sanguine*, yet none of the halfe blood could inherit. See the Booke at large, where is excellent learning of discent; as also the learning of *Possessio fratris*, &c. Resolved by the Court, that it doth not come in question, who shall enter for the forfeiture by the Statute, for the issue was joyned upon a collaterall point, whether the Mother had the custody at the time of the contract; and the finding of the Jury is not materiall, and therefore, though the Plaintiffe (who was lessee of the husband of the damsell, as appeared) had good title

title against the defendant, being lessee of the husband of the other Sister, yet; because the issue was found against him; judgement was given *Quod nihil capiat, &c.*

Boylons Case, 35. Eliz. in Banco regis. fo. 43.

A Writ of *capias satisfaciendum* is returnable at Westminster die Lune prox post Crastin. Anmarū, the party is arrested, the Sheriffe is not bound to bring the prisoner in *recta Linea*, from the place where he was arrested, or from the Countie. But if he have the prisoner in Court at the day of the returne (being never out of his custody in the meane season) it is good ; But if a Sheriffe or a Bayliffe assent that one who is in execution, and under their custody, to goe out of the Goale for a time, and then to returne, yet although he returne at the time, it is an escape. And so it is likewise if a Sheriffe suffer him to goe with a Bayliffe or a Keeper, for the Sheriffe ought to have him in *arcta custodia*, and the Statute of Westminster 2. cap. 11. says *Quod carceri mancipentur in ferris*. So as the Sheriffe may, keep him in yron and fetters, to the intent, that they may sooner satisfie their Creditors. The Sheriffe upon a *Habeas Corpus* for one in Execution may bring the party what way he will, so as he have his body at the day, according to the Writ; If one in execution escape out of the Gaole, & fly into another County, the Sheriffe upon fresh suit, takerh him again before any action brought against the Sheriffe, the Judges have adjudged this no escape, and if one in execution escape, *de son tort*, and be taken againe. he shall never have an *audita querela*, because a man shall not take advantage of his own wrong.

Sir George Brownes Case. 36. of the Queene. fo. 50.

Issue in speciall taile, the remainder to himselfe in fee, in the life of his Mother, tenant in speciall taile; levies

74 Sir George Brownes Case. Lib.3.

levies a Fine (in truth, with *Proclamations*, though they were not found) to Sir G. B. the Mother (living the Sonne) leased for three lives, which was not warranted by 32. H. 8. upon which Sir G. B. entered.

Resolved, that the lease for three lives, though without warranty, was within 11. H. 7. which saith, (*discontinue, alien, release, or confirme with warranty*) for, the intent of the Statute, was, to prohibit not onely every barre, but every manner of discontinuance, which puts the heire to his reall action; and because a release, or confirmation, is no discontinuance without warranty; the warranty referres to them, to make them equivalent to an estate which passeth by livery, Note, the title of the Act (*Discontinuance of right, or estate*) also in the Act 'tis said, *If no such discontinuance, warrant, nor recovery had been*; so that discontinuance stands in equall degree with warranty.

Resolved, that if the issue had granted his remainder in fee onely, and not barred his taile, he might have entered by the words of the Act, for the forfeiture, which saith, *Every person to whom the interest, &c. title, or inheritance, after the decease of the woman should appertain, may enter and enjoy, &c.* As if no such discontinuance had been made, and if no such had been, the land should descend to the issue.

Resolved, that in this case, Sir G. B. shall enter, for if no discontinuance had been, he should enjoy it against Anthony the issue, and all the heires of his body, though the Fine be levied in the life of the auncestor, for 32. H. 8. says, *In any wise intailed to the person so levying the Fine, or to any of his auncestors*; and though it worke, part by conveyance, part by conclusion, yet, the taile being extinct by the Fine, Sir G. B. in remainder shall enter. The same Law in this case, though the Fine were without *Proclamations*, for the issue against his Fine cannot enter; but the entry of the conusee is lawfull.

Anderson

Anderson said, where 'twas invented (to make an evasion out of this Act) that a woman should accept a Fine *come ceo*, &c. and render for a thousand yeares, pretending this not within the words (*discontinue, alien, release with warramy*, &c.) that this was an alienation within the intent of the Act, or otherwise the Statute should serve for nothing, and so it hath been resolved.

Rigewaies Case, 36. *El. in Banco regis. fo. 52.*

IT was resolved *pro tet. Cur.* although the prisoner in execution escape out of view, yet if fresh suite be made, and he be taken againe in *recenti infecutione*, he shall be in execution, otherwise at the turning of a corner, or by entring into a house, or other meaves, the prisoner may be cut of view; And although he fly into another Countie, yet because the escape was of his own wrong, whereof he may not take advantage, the Sheriffe upon fresh suite may take him there, and he shall be in execution. But if the Plaintiffe bring his action against the Sheriffe upon the escape, before that the Sheriffe take him, or if the Sheriffe doe not make fresh suite, yet in both these cases the Sheriffe may take him and keepe him in his custody, untill he make agreement with him, or he may have an action of the case, for his wrongfull escape. And although the defendant be taken upon a *cap: ad satisfaciendum*, and escape, yet if the Writ be not returned and filed, the Plaintiffe may have a new *cap: ad satisfaciendum* against him, and take him againe, and he shall not take advantage of his own wrong. But if the Plaintiffe will, he may charge the Sheriffe with the escape, if he did not take him againe in fresh suite before the action brought, and when the prisoner escapes of his owne wrong, and be taken againe, he shall never have an *audita querela* against the Sheriffe. But it is otherwise
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if he escape with the consent of the Gaoler, then he may not take him againe, and if he doe, then he may have an *audita querela*.

Resolved, that the barre was insufficient, for the Plaintiffe counted of an escape in *London*, and the defendant justifies the retaking in *Devonshire*, so that the escape at *London* was not answered; but the Plaintiffe not denying the fresh suite, but by Protestation relying upon this, that he was out of view, 'twas adjudged against him, but if he had demurred upon the barre, he should have had judgement.

Resolved, that after Demurrer, there shall not be a Repleader, for the parties by mutuall consent, have put themselves upon the judgement of the Court, and therefore without their consent, they cannot repleade, and so severall times adjudged.

Lincolne Colledge Case, 37. & 38. of the Queene. fo. 59.

Husband seised to him and to his wife for life, and to the heires of the body of the husband, dyed, the issue, in the life of the wife, then tenant of the freehold (for so the pleading was) which shall be intended by disseisin, for no surrender, or forfeiture was alledged. 4. H. 8. suffered a recovery, with single voucher, by agreement, that the recoverors should infeoffe L. &c. to divers uses and that the wife should release to them with warranty, which was done according, 11. H. 8. The wife dyed, after the issue dyed; after his issue in the third degree entered; the question was, whether the collaterall warranty should binde; the recovery did not come in question, for by the pleading it shall be intended, that he was seised by other title, then by the taile, so the single voucher not materiall.

Resolved, that though the first branch of the Statute

tute of 11. H. 7. says, that the warranty shall be voyd, yet the clause following (*and that it shall be lawfull, &c. to enter*) being annexed to the first, expounds the generality of it, and though he to whom the interest, &c. after the death of the wife appertaines, may avoyde it by entry, yet, 'tis in force against all others; and so the Judges have expounded other Statutes, 8. H. 6. All Outlawries shall be voyd, except a *Capias* be awarded against the party, in the County, where, &c. yet this ought to be avoyded by error. The Statute of 1. of the Queene ordaines that all grants, &c. by a Bishop, in other manner then, &c. shall be utterly voyd; but 32. & 33. of the Queene, betwixt *Salé* and the Bishop of C. and L. a grant of a next avoydance of a Church (not warranted, &c.) was not voydable against the Bishop himselfe, but only against his Successors. And with this resolution agrees 27. H. 8. upon the same Statute of 11. H. 7.

Resolved, that this warranty was out of the intent of the Act, which onely restraines warranty, which prejudices the heire in taile, or those in remainder, but when the warranty, &c. of the wife, is but for to perfect and corroborate the estate assured by the issue himselfe, &c. 'tis not restrained by the Act, for it shall be intended to the benefit of the heire, which is the reason, that a common recovery is not restrained by W. 2. for the intended recompence; and if the wife and the issue had joyned in a Fine, this had barred the taile; so, if the wife had surrendred, the issue might have suffered a recovery. H. 39. of the Queene, the case was, that the younger Sonne tenant in taile by devise, was vouched in a recovery suffered, by a woman tenant for life, by the same devise, and this was to the use of the vouchee and his heires, who dyed; and 'twas adjudged that the Sister of the vouchee, by the intire blood shall have it, not the elder brother,

brother, & that the recovery was not within 14. of the Queene, though suffered by tenant for life; and the Statute says, that it shall be utterly voyd; for 'twas not the intent, that the Act should extend to a recovery, in which he in remainder in taile was vouched, who had an estate that might continue for ever, and had the power to docke all the remainders; so here, this Statute doth not extend to this warranty, because, &c.

Resolved, when the first issue disables himselfe, for to take advantage of the forfeiture, and dyes, his issue shall never take benefit of it, because, he was not in *rerum natura*, nor had the immediate interest at the time; and this was Sir George Brownes case before, where the issue in taile in the life of his Mother, tenant in speciall taile, levied a Fine, without proclamations; and here, if error were in the recovery, the warranty barres him of his action, because he himselfe by his own act, hath barred his entry. But here if the wife had released, &c. after the death of the issue, his issue might have avoyded the warranty.

Note, (Reader) it seemes to me, if in such case a woman levies a Fine, or suffers a recovery, though the daughter enters, or not, and though she joynes in the Fine, or is vouched in the recovery, or by any other act disables her selfe, yet the Sonne borne after shall take advantage of it; for entry upon this Act of 11. H. 7. is not like entry upon the Statute of 6. R. 2. ca. 6. For there the daughter by expresse words, hath it as a perquisite, but upon 11. H. 7. *per formam doni*.

Resolved, if tenant in taile, in of another estate, suffer a common recovery, and a collaterall auncestor releases with warranty to the recoveror, after the recoveror makes a Feoffement to uses, which are executed by the Statute of 27. H. 8. and the auncestor dyes, though the estate be transferred in the post, before the
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discent of the warranty, yet, it shall binde, and the terr-tenants shall Rebutt. See excellent learning upon this point, where an estate transferred in the *post*, before discent of the warranty, shall binde, where not, and where there shall be Rebutter in such case, where not.

Pennants Case, 38. of the *Queene*. fo. 64.

LEase for yeares upon condition, that the lessee shall not assigne, &c. without assent of the lessor, he assignes, &c. the lessor not having notice of the assignement, accepts the rent due after; and enters; it was adjudged for the lessor his entry lawfull; for that the condition being collaterall, the breach whereof may be so secretly contrived, that it is not possible for the lessor to have notice thereof, and notice in this case is materiall and issuable; for otherwise the lessee might take advantage of his own fraud. But if a man make a Lease for yeare, rendring rent upon condition, if the rent be not paid to reenter. In this case if the Lessor demand the rent, and the same is not paid, if after he accept the rent (before the reentry made) due at another day, he hath dispensed with the condition, for there the condition is annexed to the rent, and he (having made demand of the rent) well knew the condition was broken; but although in this case, that he accept the rent, due at that day, for which he made the demand, yet he may reenter, for as well before, as after his reentree, he may have an action of debt, for the rent upon the contract between the Lessor and the Lessee.

If the Lessor distraine for the rent, for which the demand was made, he hath affirmed the Lease; for after the determination of the Lease, he may not distraine for rent.

It was also resolved, that as well in case of the condition

dition annexed to the rent, as in case of a condition annexed to any collaterall act, if the conclusion of the condition be, that then the Lease for yeares shall be voyd, there no acceptance of the rent due at any day after the breach of the condition will make the voyd Lease good.

Resolved, that as a voidable Lease cannot be affirmed by word, for money, &c. so the acceptance of a rent which is not *In esse*, nor due to him which accepts it, doth not affirm the Lease as a gift to a Husband and Wife, and to the Heires of the body of the Husband, the Husband dyes, the issue accepts the rent of the Lessee of the Husband, during the life of the Wife, the Wife dyes, yet the issue shall avoyd the Lease, for no rent was due.

And there is a diversity between a Lease for life, and for yeares, in case of a lease for life, though the conclusion of the condition be, that it shall be voyd, yet acceptance of a rent due after the breach, shall affirm it, for the freed-hold being created by livery, cannot be determined before entry. If the successor accept the rent upon a Lease for yeares of a Parson, Vicar, Prebend, 'tis worth nothing, for 'tis voyd by death, otherwise of a Lease for life. But if the successor of a Bishop, Abbot, or Prior, accept the rent upon a Lease for yeares, he shall never avoyd it, for 'twas voydable onely.

Note (Reader) it seemes to me, if upon a Lease for life, the Lessor accepts the same rent which was demanded, he hath affirmed the Lease, for he cannot accept it, as due upon any contract, as upon a Lease for yeares, for when he accepts it, he cannot have an action of Debt for it, but his remedy was by Assise, if he had seisin or by distresse, but after reentry he may have an action of Debt.

If he that hath a rent service, or rent charge, accepts

cepts the rent due at the last day, and therefore makes an acquittance, all the arrerages due before, are thereby discharged, and so it hath been adjudged, *In Hopkins & Mortons Case 10. El. Dyer.*

A man is not bound to pay an annuity without an Acquittance, but a rent service, or rent charge he is.

If the Lord accepts the rent or service of the Feoffee, he loses the arrerages in the time of the Feoffor, though he makes no acquittance, for, after such acceptance, he shall not avow upon the Feoffor at all, nor upon the Feoffee, but for the arrerages which incurred in his time; otherwise, where the Feoffor dyes, and there is such an acceptance. But acceptance of rent or service by the hands of the Feoffee, shall not barre the Lord of reliefe due after, for that is no service, if it were, Debt would not lye for it.

'Twas said, if the Lord accepts services by the hands of the Heire, infeoffed within age by collusion, he loses the wardship. But against this 'twas objected. First, because the Lord upon tender of the arrerages, and notice is compellable to avow upon him. Secondly, he cannot be concluded before title accrued. Answered, the Lord is not compellable, &c. for he may shew the collusion, and avow upon the Feoffor, and by acceptance, the Lord waives the benefit of the Statute, purges the collusion, and loses the wardship.

Westbyes Case, 40. Eliz. In Banco Regis, Fol. 71.

Westby brought an action of Debt against Skinner & Catcher, Sheriffes of London, for an escape. One Buston was in execution, and in their custody, at the Suite of one Dighton, and at the Plaintiffes Suite, and at the end of their yeare, the Sheriffes deliver'd the body of Buston (amongst others) unto the new Sheriffes by Indenture, wherein the execution at the Suite of Dighton, was mentioned, but the execution at

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the Suite of *Westby* was omitted, and *Buston* still continued in the Gaole, and if the Defendants should be charged in this Case, with the escape, was the Question? And it was adjudged, that they should be charg'd, for although he was within the walls of the Prison, yet that was an escape in Law, as to the Plaintiffe. And it was resolved, that *Eo instanti*, that the auncient Sheriffes, delivered their Prisoners to the new Sheriffes, the escape began as to the Plaintiffe.

Note hereby, that the Law judgeth one that remaines in the Gaole to have escaped, and it was resolved, that the ancient Sheriffes ought to give notice to the new Sheriffes of all executions that they have against any, that are in their custody, and it was also resolved, untill the Prisoners be delivered to the new Sheriffes, they remaine in the custody of the old Sheriffes. Notwithstanding the new Letters Patents, the Writ of discharge, and the Writ of delivery. And 'twas resolved, that if the old Sheriffe die before a new one be made, the new Sheriff at his own perill ought to take notice of all executions against any of the Prisoners; and this is for necessity, and if one in Execution breake the Gaole between the death of the old Sheriff, and the making of the new, this is no escape, but when the Sheriff is dead, all the Prisoners are in the custody of the Law, untill the new Sheriff be made; & although no fresh Suite be made after, they may be taken in Executiō, in what place soever they come in.

Deane and Chapter of Norwich Case, 40. and 41. of the Queene. fo. 73.

H. 8. An. 30. translated the Priory and Covent of the Cathedrall Church of the holy Trinity of *Norwich*, into the Deane and Chapter; &c. and discharged them by their speciall names, *Tam de habitu quam de regula*; *ipsoq; decanum & Capitulum*, *perpetuis temporibus duraturis*

L.3. *Dean & Chap. of Norwich Case.* 83

ris incorporavit, and granted them all the Mannors, &c. which of late belonged to the Priory, and granted that they should be the Deane and Chapter of the Bishop of Norwich, and his Successors, after 2.E.6. the Deane and Chapter surrendered to the King their Church and possessions, and he incorporated them by the name of the Deane and Chapter, *Sancta & individua, Trinitatis Norw' ex fundatione*, E. 6. And regranted them their Church and Possessions, by the name of the Deane, &c. omitting *Ex fundatione Regis*, E. 6.

Objected, that *Herbert* heretofore Bish: of Norwich, was Founder, and being not party to the translation, 'tis voyd.

Answered, the King was Founder, as appears by many Records, and by the Foundation; but, admit the Bishop Founder, yet the translation was good: for the Pope might have discharged a Monk of his profession, and therefore the King may doe it, by the Statute of 25. H. 8. And this translation is no prejudice to the Founder for he remains Founder, & nothing is altered but the rule and profession; and this Prior was eligible. 11. of the Queene. *Dyer Corbets case*, proves this very translation good, & by judgement of Parllament, 33. H. 8. such translations are good. All Chapters were Monkes, & notwithstanding their translation into Prebends, or Cannons, the Advowson remains as before; But admit the translation voyd, yet, 'tis good by the Statute of 35. of the Queene; see the Booke at large.

Objected, when they surrendered to E. 6. and he regranted to them, by the mis-naming of the Corporation, for (*ex fundatione Regis*, E. 6.) was omitted, the grant was voyd, and nothing passed, for the name of the Founder is parcell of the Corporation.

Answered, notwithstanding the surrender of their Church, their Corporation continues, and they remaine the Chapter of the Bishop; though there can
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not be a Gardian of a Chappell, when the Chappell & all the possessions are aliened. In Christian policy 'twas thought necessary (for that the Church could not be without Sects and Heresies) that every Bishop should be assisted with a Counsell, viz. a Deane and Chapter.

1. To consult with them in deciding of difficult Controversies of Religion, to which purpose every Bishop *habet Cathedram*. 2. To consent to every grant the Bishop shall make to binde his successors; for the Law did not judge it reasonable, to repose such confidence in him alone: at first all the possessions were to the Bishop, after a certain portion was assigned to the Chapter, therefore the Chapter was, before they had any possessions, and of common right, the Bishop is Patron of all the Prebends, because their possessions were derived from him, so that so long as the Bishoprick continues, the Deane and Chapter (being his Counsell) remains, though they have no possessions, as at first they were, when the Bishoprick consisted all of spirituality. The Prior & Friers Carmilites had not any possessions nor place. And 32. H.8. Fitz held if an Abbot or Prior and covent, sell their possessions, yet their Corporation remains. All Bishopricks were of the Foundatio of the Kings of England, & anciently Donative by them; but, by grant of the Kings, became after Eligible by their Chapter; wherefore, if by their surrender, their Corporation should be dissolved: three inconveniences would follow. First, to the Bishop, for his assistance in the Episcopall function. Secondly, to the Bishop and others, touching the confirmation of Grants. Thirdly, to all the Church, for how should the Bishop be chosen?

Resolved, First, if there were any imperfection in the Translation the Statute of 35. of the Queene hath made it good.

Secondly, that the Act of 1.E.6. hath made it good, though the Corporation were gone by the surrender, and the misnamer materiall.

Holden

Holden by the Justices and Lord Keeper, that the ancient Corporation remaines, notwithstanding the surrender.

Fermors Case, 44. of the Queene. fo. 77.

Smith Lessee for yeares of a House, and Tenant at will of Land, and Tenant by Copy of other Land within the Mannor of S. to Fermor, leased all for life to I. S. and also seised of other Land there in Fee, levied a fine with Proclamations of all Messuages, and Lands (which comprehends all those Leases, and also his inheritance) by covin, to dis-inherit his lessor, and after the fine, alwayes continues in possession, and pays the severall rents to F. The lessee for life, dyes, the yeares expire, S. claimes the inheritance.

Resolved, that the Lord of the Mannor was not barred by the said fine. 1. The makers of the Statute of 4. H. 7. never intended that a fine levied by Tenant at will, yeares or Copy, which pretend no Inheritance nor title to it, but intend the disherison of the Lord, &c. should barre them of their inheritance, and where the Statute saith (*That fines ought to be of greatest strength to avoyd strife and debate.*) This Feoffment and fine by the Lessee shall be the cause of strife where none was before. 2. The Statute doth not intend, that those who of themselves without such fraud, could not levy a fine to barre those which had the freehold & inheritance, should be inabled to levy a fine by making of an estate to another, by practise and fraud. 3. If doubt be conceived upon an act of Parliament, 'tis to be construed by the reason of the common Law, & that so abhorres fraud, & covin, that all acts, as well judicall, as others, and which of themselves are lawfull and just, yet being mixt with fraud and deceit, are tortious and illegall. If a Woman intituled to have Dower (which is favoured in Law) by covin, causes a stranger to disseise the

terretenant, to the intent to bring Dower against him and recovers accordingly, 'tis all voyd. So if a Feme covert, or Infant (much favoured in Law) of covin, causes another to disseise the discontinuee, & infeoffe them, they are not remitted. Sale in Market overt shall not binde; if the Vendee had notice that the property was to another, or if the Sale be by covin; the Law hath ordained the common Bench as a Market overt, for assurance of Land by fine; for it sayth, *Finis finem litibus imponit*, yet covin shall avoyd them: A Vacat was made in Banco of a recovery had by covin, 33. & 34. of the Queene adjudged, where Tenant for life levied a fine with Proclamations, and five yeares passed, and he dyed, that the Lessor shall have five yeares after his death, for though the Statute sayes the right which *first shall grow*, and the right first accrued to the Lessor, by the forfeiture, yet because the Lessor by covin of the Lessee, might be barred, for he expected not to enter, till after the death of the Lessee, 'tis no barre, & namely, when the Lessee hath Land of Inheritance in the same Towne, (as in this case) so, 'twas agreed in the same case, if the Feoffee of the Lessee for life hath Lands in the same Towne, & levyes a fine, &c. the Lessor shall have five years after the death of the Lessee, for he knew not of what land the fine was levied (not being parry to the Indenture or agreement) &c. So, the Judges have construed the act against the Letter, for Salvation of the Inheritance of him in reversion. And 'twas said, if the Feoffee of a Lessee for yeares, who made a Feoffment by practise, hath Land in the same Ville, and levy a fine, and the Lessee payes the rent to the Lessor, it shall not binde, and in the principall case, the payment of the rent after the fine, makes the fraud apparant, for by this the Lessor was secure, and nor cause of any doubt of fraud.

But 'twas resolved, if the Bargainee or Feoffee of A. perceiving

perceiving that C. hath right, levies a fine, or takes a fine of a Stranger, to the intent, to barre C. this fine levied by consent shall binde, for nothing was done in this, that was not lawfull, and the intent of the act was to avoyd strife. So, if A. (pretending title) disseise B. and to the intent to barre the disseisee, levies a fine, for the disseisor, *Venit tanquam in arena*, & 'tis not possible, but the disseisee had knowledge of it, & if he doth not enger, 'tis his folly. But in the case at barre, every one will presume that the fine is levied of his own Land, because that he might lawfully doe; and though this conteines more acres, then his own Land, this is usuall almost in all fines; and the covin of the Lessee is the cause of non-claime of the Lessor, and a man shall not take advantage of his own covin; and here the fraud is the more odious, because of the great trust, viz. Fealty. To the objection, that it should be mischievous to avoyd fines, upō such nude averments; 'twas answered, that it should be a greater mischiefe, principally, if fines levied by such covin, should binde. And an averment of fraud may be taken by the Statute of 27. of the Queene, against a fine levied to secret uses, by fraud, for to deceive Purchasors. So by the Statute of 13 of the Queene, an averment may be taken, against a fine levied upon an usurious contract.

Twynes Case, 44. Eliz. in Cam. Stel. fo. 80.

IN an Information per Coke Atturney General against Twyne of Hampshire, for contriving and publishing of a fraudulent Deed made of goods. The case upon the Statute 13. *Eliz. ca. 5.* was thus; Pierce was indebted unto Twyne, in 400. *l.* and to one C. in 200. *l.* C. brought an action of Debt against Pierce (& hanging the Writ) Pierce being possessed of goods & Chattells to the value of 300. *l.* in secret made a deed of all his goods and Chattells to Twyne, in satisfaction of his Debt, and yet

Pierce continued in possession of the same, and some of them he sold, and his Sheepe he marked with his own marke; and after, *C.* had judgement, and a *Fier. fac.* to the Sheriff, & by vertue thereof Bayliffs came to make execution of the goods, & divers persons by the commandement of *Twyne*, with force resisted them, claiming them to be the goods of *Twyne* by vertue of the same deed, & whether this deed was fraudulent or no, was the Question? and 'twas resolved by Sir *Thomas Egerton* Keeper of the Great Seale of *England*, and by the chiefe Justices, *Popham* and *Anderson*, and all the Court of Star-chamber, that this deed was fraudulent and within the Statute of 13. *El.* And in this Case divers things were resolved.

First, That this Deed had the marks of fraud, it was generall, and without exception of his apparell, or any thing of necessitie, for *dolus* *versatur in generalibus*.

Secondly, The Donor continueth in the possession.

Thirdly, It was made in secret, *Et dona clandestina semper sunt suspiciosa*.

Fourthly, It was made hanging the Writ.

Fifthly, There was trust between the parties, for the Donor was in possession, and used them, and fraud is alwayes apparelled with trust, and trust is the cover of fraud.

Sixthly, It was contained in the deed that it was honestly truly and *bona fide*, *Et clausula in consuetudinem semper iuducant suspicionem*, and it was resolved, although it was a due debt to *Twyne*, and a good consideration of the deed, yet it was not within the proviso of the said Act of 13, *Eliz.* By which it is provided that the said Act doth not extend to any estate or interest in Lands, &c. goods & chattells made upon good consideration, and *Bona fide*, for although it be upon good and true consideration, yet it is not *Bona fide*, for no deed shall be deemed to be made *Bona fide* within the said proviso that
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is accompanied with any trust, for the proviso saith upon good consideration and *Bona fide*, so as good consideration doth not serve, if it be not also *Bona fide*.

Therefore (good Reader) if any deed be made to thee in satisfaction of any debt, by one that is indebted unto others also. First, let it be in publick manner before Neighbours. Secondly, valued by good men to a true value. Thirdly, take them out of the possession of the Donor presently, for continuance of possession in the Donor is a marke of trust.

There are two considerations (*Viz.*) Consideration of blood or nature, and valuable consideration. And if one that is indebted to five severall persons, every one 20. l. in consideration of naturall affection, doth give all his goods unto his Son or Cosen. The intention of the Statute was, that the consideration in this case should be valuable, for equity requires that this deed that defeats others, shall be made of as high a consideration, as the things are, that are so defeated thereby, for it is to be presumed, that the Father if he had not been indebted unto others, would not dispossesse himselfe of all his goods, and subject himselfe to his Cradle. And therefore it shall be intended that it was to defeat his Creditors. And if a consideration of nature or blood, shou'd be a good consideration within this proviso, the Statute would serve for little or nothing, and no creditor should be sure of his Debt.

A feoffment made solely in consideration of nature or blood, shall not take away the use raised upon valuable consideration, but it shall take away a use raised in consideration of nature, for both considerations are in *Equali jure*, and of the same nature.

Many men marvaile the reason that so many acts and Statutes are daily made: this Verse answereth.

Queritur ut crescunt tot magna volumina legis.

In promptu causa est crescit in orbe dolor.

And

And because fraud abounds in these dayes, more then in former times, it was resolved, that all Statutes made against fraud, shall be liberally expounded, for to suppress the fraud, and according to this, see severall resolutions in the Booke at large.

It was resolved, that no purchasor may avoyd a precedent conveyance made by fraud, but he that is a purchasor for money or other valuable consideration paid, for consideration of blood is a good consideration, but not such a consideration as is intended by the Statute, 27. *El. c. 4.* for valuable consideration is onely good consideration by the same act. *Anderson* chiefe Justice of the common banck said, That a man who is of small capacity, and not able to governe his Lands, that discends unto him, and being disposed to ryot and disorder, by the mediation of his friends, by open Act conveyes his Lands to them, upon trust and confidence, that he shall take the profits for his maintenance, and that he shall have no power to wast or consume them, And after, he being seduced by deceitfull and covetous persons bargained for small summes, his Lands of great value; this bargain although it were for money, was holden to be out of this Statute, for this act was made against all fraud and deceit, and shall not ayd any purchasor that cometh not to the Lands for good considerations lawfully without fraud or deceit. And in this case *Twyne* was convicted of fraud, and he, and all the others of a ryot.

Resolutions. P. 44. of the Queene upon the Statutes of Fines. fo. 84.

A. Tenant for life, the remainder to B. in taile, the remainder to B. and his heires, B. levies a Fine, hath issue, and dyes, before all the Proclamations passed, the issue then beyond the Sea, the Proclamations are made, the issue retournes, and upon the land claims the remainder. Re-

Resolved, that the estate which passed, was not determined by the death of tenant in taile; so, if tenant in taile of a rent, Advowson, Tythes, Common, &c. grants by Deed, and dyes; for if the issue brings a *Formedon* for the rent, he makes the grant voydable, if he distraines, or claimes it upon the land, he by this determines his election. And there is no diversity, betwixt tenant in taile of a rent, &c. and tenant in taile of a reversion, or a remainder upon an estate for life, though in the first case, the issue may have a *Formedon* presently after the death of tenant in taile.

Holden by *Popham*, and divers other Justices, that the Statute of 32. H. 8. hath inforced the case, that the estate which passes by the Fine of tenant in taile, shall not be determined by his death, for by this 'tis provided that Fines levied of any lands, &c. intailed, immediately after the Fine ingrossed, and Proclamations made, shall be a barre, if the Fine cannot be a barre without continuance, the Statute hath provided, that the estate shall continue, for it provides for all necessary incidents to the perfection, and consummation of it. Every Fine shall be intended with Proclamations, for 'tis most beneficiall for the conusee, & all Fines being the general assurance of land are levied according.

Resolved, that though by the death of tenant in taile, a right of the estate taile descends to the issue, for that the tenant in taile dyed before all the Proclamations passed, yet, when they are passed, without claime, this right is barred by the Statute of 32. H. 8.

Resolved, by all the Judges and Barons (but three) that the issue (in this case) being heire and privy, cannot, by any claime, save the right of the taile, which is descended to him, but that after the Proclamation, he shall be barred; for, 'tis provided (that every Fine after the ingrossing of it, and Proclamation had and made, shall be a small end, and conclude as well privies as strangers.)

gers.) And if no saving had been, all strangers had been barred also, and all the exceptions extend onely to Strangers, but the issue is privy.

To the objection ; if by the equity of the Statutes, the issue cannot claime, &c. to what purpose are the Proclamations with such solemnities ?

Answered, 32. H. 8. being an Act of explanation of 4. H. 7. as to the Fine by tenant in taile, shall not be taken by any strained construction against the letter, for then 'tis requisite to have a new Act of explanation, upon the explanation, & sic in infinitum. By 4. H. 2. every one hath liberty to pursue a Fine according to the said Act, viz. with Proclamations, &c. or without (as at common Law) and therefore the Act of 32. H. 8. of necessitie prescribes that Proclamations shall be made according to 4. H. 7. to distinguish it from a Fine at common Law, and not to inable the issue for to make claime, for this should be against the expresse intent of the Act, in the Preamble, and purview. Also it should be very inconvenient, if, when such Fine is levyed, for a valuable consideration, advancement of his issues, or payment of his debts, and he dyes before Proclamations, that all should be avoyded by the claime of the heire, when the conusee could not have better assurance, by Recovery, for that he was not tenant to the *Præcipe*. See the Booke at large, in what case the issue in taile may averre seisin in a Stranger, & *quod partes Finis nihil habuerunt*, what not.

Objected, 1. 'tis provided by the Statute *de donis*, &c. that as to the issue, *Finis ipso jure sit nullus*. 2. That the Statute of 27. E. 1. extends not to the heires in taile, as 8. H. 4. is, for the issue is not bound by any Record, which intres by way of Estoppell. 3. 27. E. 1. speakes *De finibus rite levatis*, and when there wants seisin (which is the essence of a Fine) 'tis not *rite levatus*, 46. E. 3. that 'tis a good plea.

An-

Answered, the Statute *de donis*, &c. was made 13. E. 1. and the Statute of Fines, 27. in which the issue is not excepted, therefore he is bound, and according there is a good opinion, 8. H. 4.

To the second, though the issue was not barred of his right before, 4. H. 7. yet he was estopped to say, *Quod partes Finis nihil habuerunt*.

To the third, *Finis rite levatus*, is intended in due forme of Law, which it may be, though it be onely by way of conclusion, for the same Act ousts the parties from such averment, and 46. E. 3. is to be intended of a collaterall auncestor, from whom the heire doth not claime the Land, and then the averment is good.

In *Conisbies case* 'twas resolved, upon a Fine levied to tenant in taile in remainder, by tenant for life, and a grant and render of a rent, that this was not within the Statutes of 4. H. 7. or 32. H. 8. for the Fine was not of the land it selfe which was intailed, but of the rent newly created out of the land. And in the Lord *Zouches case* 'twas resolved, that 4. H. 7. and 32. H. 8. doe extend to Fines levied by conclusion, and shall binde, though *partes*, &c. *nihil habuerunt*; as if tenant in taile makes a Feoffement, or be disseised, and levies a Fine. for the Statute says, (*All Fines of any lands, &c. in any wise intailed to the person so levying, or to any of his auncestors*) and in 4. H. 7. the exception, *Quod partes*, &c. is saved to all persons not party, nor privy to the said Fine, and the issue in taile is privy, for he claimes as heire by descent, and if such Fine shall barre, where the tenant in taile had nothing, though the issue enter after the death of the auncestor, before all the Proclamations passe; *a fortiori* here, when tenant in taile, at the time was seised of an estate; though 'twere in reversion, See *Archers case*, where a Fine shall barre the issue, where the Father had onely a possibilitie at the time of the Fine levied.

Purshwes case, 32. of the Queene, tenant in taile levies a Fine, Term. P. & T. and dyed in August next, his daughter (being heire to the taile) & her husband brought a *Formedon*, and, pending the plea, the Proclamations passed; and 'twas agreed by the Court, that the tenant shall plead the Fine, and the Proclamations which passed pending the Writ, & shall barre the demandant, yet, there the issue did all that might be done; for the conveyance is the Fine, and the Proclamations, are but a short repetition of the Fine; out of this, foure things are to be observed. 1. Though after the Fine, a right descends to the issue, yet, after Proclamations, the right is barred. 2. Though he pursues a *Formedon*, yet after Proclamations, he is barred; *ergo*, in the principall case he is barred, notwithstanding his entry or claime *in pays*. 3. When tenant in taile levies a Fine, and dyes, before Proclamations, the issue is not within any of the *savings*, for then the bringing of a *Formedon* should avoyd the barre. 4. The Proclamations serve for no purpose, but to distinguish the Fine, from a Fine at the common Law. *Trin.* 4. of the Queene *Beudlowes* tenant in taile, disseised the discontinuee, and levied a Fine, and tooke an estate by render, the discontinuee enters, and claimes, before all the Proclamations passed, and avoyds the estate, after the Proclamations passe, tenant in taile continues his possession, and dyes within the yeare, after the entry and claime. Resolved, that the issue was not Remitted, but barred by 32. *H.* 8. Though the estate was avoyded, before all the Proclamations passed.

Resolved, though the issue be beyond the Sea, yet, because he is privy, &c. he is bound, as if he were within age, covert, or *non compos*. Which was agreed by all the Justices: *Ergo*, the claime of the issue is not materiall, and if Infancy, &c. should avoyd the Fine, no man should be assured of land conveyed.



THE FOURTH BOOK.

*Vernons Case. 14. & 15. of the
Queene. fo. 1.*



N Dower, the tenant shews that the husband made a Feoffment of other Land, to the use of himselfe for life, and after to the use of the demandant for life, &c. and averres, that the said estate was for her Joynture, &c. and that the demandant hath entered, &c. and agreed to the estate; the demandant shews that the estate was upon condition, for to performe the will of the husband, and that divers things were to be performed in it, judgement if the tenant shall be admitted, &c.

Resolved, that at Common Law, a right or title to a Freehold, cannot be barred by acceptance of a collaterall satisfaction, or recompence. As if a disseisor of the Mannor of P. gives to the disseisee the Mannor of S. in satisfaction of all his right, &c. And therefore 'tis said in our Bookes, that an accord with satisfaction is a good plea in a personall action, where damages are to be recovered, not in a reall; and therefore no barre in Dower; but Dower *ad ostium Ecclesie*, or *ex assensu parit*, concludes her, if she enters after, &c. for the Law allowes them, &c. to be Dowers in Law. Before 27. most lands were in use, and because wives were not dowable of the use, estates were made by the Feoffees, to the husband and his wife; before, or after

after the marriage for life, &c. for a competent provision for the wife ; then 27. transferred the possession to the use, and if further provision had not been, the wives should have their Dowers and Joyntures also : and therefore those branches were made in the same Statute of 27.

Resolved, that the Feoffment to the use of himselfe for life, the remainder to his wife for life, for the joynture of the wife, is within 27. for though that five estates onely are expressed. 1. To the husband and wife, and the heires of the husband, &c. 2. To the heires of their two bodies. 3. Of the body of one of them. 4. For their lives. 5. To the husband and wife for life of the wife, yet, many other estates are within the Act, for these are put for example, not to exclude others : But resolved, that no estate is a joynture, except it takes beginning presently after the death of the husband ; for so, are all the examples : and therefore to himselfe for life, the remainder to B. for life, the remainder to his wife, &c. is not within the Statute, &c. And therefore though the wife enter, and takes the profits, she shall have Dower. An estate to one and his wife, and the heires males of their two bodies, adjudged a good joynture, yet none of the five estates mentioned ; an estate made to a woman for life, before marriage, adjudged a good joynture.

Resolved, though the estate here were upon condition, and though Dower (in place of which the joynture comes) were absolute, yet because an estate for life upon condition, is an estate for life. 'tis within the words, and the intent of the Act, if the wife accept it, &c.

Resolved, that a wife cannot waive a joynture made before the coverture, as she may a joynture made after ; and this by the *Proviso* (if any woman hath lands, &c.

&c. assured after marriage for her life, &c. after death of the husband she hath liberty to refuse, &c.) and therefore the intent of the Statute, was, that she should not refuse a joynture made before, and land conveyed for part of her joynture, or in satisfaction of part of her Dower, is no bar of any part, for the uncertainty; for the Statute says, for the joynture of the wives, and not for part of the joynture.

Resolved, that though the estate of the wife be upon an expresse condition, for to performe the will, which imports a consideration of making the estate, yet, it may be averred for joynture, for the one consideration well stands with the other, and though it be not expresse in the Deed, yet, it may be averred: and the case is the stronger, because the averment is given by the words of the act. And a Fee simple to the wife, in satisfaction of her dower, is a joynture within the equity of 27. for the reasons aforesaid, as also because 'tis within the expresse words (*for terme of life, or otherwise*) for all estates as beneficiall, or more, are within, by this word *otherwise in joynture*, after judgement was given against the demandant.

A devise to a wife for a life, in taile, &c. for her joynture, is a good joynture within 27. as 'twas resolved in *Leake and Randals case*. Otherwise, where a man devises to his wife for life, &c. generally this cannot be averred to be for joynture, and therefore no bar of Dower. 1. Because a devise imports a consideration in it selfe, and shall be taken as a benevolence. 2. All the will for land by 32. & 34. H. 8. ought to be in writing, and no averment ought to be taken out of the will, which cannot be collected by the words within; an estate before marriage is within the equity of the Statute; so an estate by devise, which takes effect after the marriage dissolved is within 27.

Bevills Case. 27. & 28. of the Queene. fo. 8.

TENANT by Homage; Fealty, and Escuage, and suite to Court twice a yeare; the Lord was seised of the Fealty onely by the hands of the Tenant. Resolved, that seisin of Fealty, was a seisin of all the said services; for when the tenant doth fealty, he takes a corporall oath, that he shall be faithfull and true to the Lord, and shall beare him faith of the tenements, which he claimes to hold of him, and that he will lawfully doe the customes and services, &c. And though Homage be more honorable, and the most humble service, that a Freeholder can do to his Lord, yet, fealty is the more sacred service, for this is done upon oath, not the other. And the words (*shall be faithfull and true*) are also parcell of Homage; and Seisin of any part of any service, is a Seisin of the whole, and the Law, for this reason, so respects these services, that no distresse for them, shall be excessive, and though distresse be so often, that the tenant cannot manure his land, he shall not have an Assise, as for rent, or other profits.

Resolved, that seisin of a superior service, is a seisin of all inferior services incident to it, as a seisin of escuage, of homage and fealty, homage of fealty, rent of fealty, where the Seigniorie is by fealty, and rent. Resolved, that doing of homage; is a seisin of all services inferior and superior, because he takes upon himselfe to do all services. Resolved, that seisin of rent of suite, or of other annuall service, is seisin of escuage, homage, fealty, ward, reliefe, heriot service, service for to cover the hall of the chiefe house of the Mannor, for to impale the Parke of the Lord or such casuall services, which perchance will not fall in sixty yeares, but seisin of one annuall service is not seisin

seisin of another annuall service, as rent, of suite nor of worke dayes, for 'tis the folly of the Lord, that he attained not seisin, and it should be mischievous to the tenant, for perhaps in ancient time the worke dayes are discharged, which now cannot be shewn.

Note (Reader.) all this is to be intended of a seisin in Law, for seisin of fealty here, is no actuall seisin of homage, nor of suite, nor fealty of rent, but seisin of any part of a service is an actuall seisin of all to have an assise. And as to make a vowry seisin in Law suffices; but as for an Assise actuall seisin is requisite; so in a writ of right of Land. See the Booke at large, and there, where ancient seisin to an estate altered, or changed from one person to another, shall be sufficient where not.

Resolved, that seisin in Law was sufficient, to make an avowry within the Letter, and the intent of the Statute of 32. H. 8. for the intent was to limit a time, within which, seisin ought to be had, [not to exclude any seisin, which was a lawfull seisin by the common Law, which appeares by the preamble. Also, the former acts of limiration as *W. 1. ca. 38. W. 2. ca. 2.* doe not exclude a seisin sufficient at common Law. And the Statute saith (*Actuall possession, or seisin*) which (*Seisin*) is either actuall or in Law.

Resolved, that the act doth not extend to such a rent or service, which by common possibility cannot happen within sixty yeares, as homage, fealty, for the tenant may live beyond, or to cover the Hall, or to goe in Wa re, so of a *Formedon in Descender*, for tenant in taile may live sixty yeares, after discontinuance, and though *In facto* he dyes, and the issue doth not pursue his *Formedon*, yet, he may have it at any time, and the seisin of the donee was not traversable, so of homage and other casuall services, though the Lord might have had seisin. So, if the Lord release to the

tenant, so long as I. S. hath heirs of his body, though sixty years passe, yet he may distrain, for *impotentia excusat legem*, and there may be a tenure by homage, &c., and yet never done, as if the Land be conveyed to a Major, &c. or other Corporation aggregate of many, they hold by fealty, yet they cannot doe it. A Writ of Escheat, *Cessavit*, *Rescous*, are not within the Act, for in them the seisin is not traversable, but the tenure, and in the Escheat and *Cessavit*, they demand the Land and can lay no seisin, and the Act extends onely to those Writs where the demandant or his Ancestors might have had seisin. So, *Note*, Land shall escheat, though there be no seisin of the services, within the time of limitation, for the Seignory remaines, though seisin wants; so if the tenant cesse, and the Land be not overt, and sufficient to his distress the Lord shall have a *Cessavit* though he wants seisin of the services. Resolved, if nothing be arreare and the Lord distraines, the Tenant may make rescous, or if he be so often distrained, that he cannot manure his Land, he may have an Affise, *De sonent distress*, but for such tortious distress where nothing is arreare, the Tenant shall not have Trespasse, *Vi & armis*, against the Lord, for this is prohibited by the Statute of *Marleb ca. 3*. See the Booke at large in what case an encroachment of more rent by the Lord then he ought to have, shall be avoyded, in what not.

Resolved, that though a man hath been out of possession of Land by sixty yeares, yet if his entry be not taken away, he may enter, and bring any possessory action of his own possession, for the first clause doth not bar any right, but prohibits that none shall have a Writ of right, &c. of the Possession of his ancestors, &c. but onely of a seisin within sixty yeares; the first and second clause extend onely to seisin ancestorrell;

cestrell, the third to an action of his owne possession, not to entry, the fourth to avowry, the fifth to a For-medon, &c.

Note (Reader) out of this, that when the tenant hath done homage and fealty, which the Lord may inforce him to doe, this shall be a seisin of all other services, as to avowry, though the Lord nor those by whom he claimes had seisin within sixty years.

Actions of Slander.

The Lord Cromwells Case, 20 of the Queene, fol. 12.

THE Lord Cromwell brought an Action De Scandalis magnatum, against D. Vicar, *Tam pro domina regina, quam pro seipso*, upon the Statute of 2. R.2. ca^o 5. The Defendant said to the Plaintiffe, *It is no marvell though you like not of me, for you like of those that maintaine sedition against the Queenes proceedings*, the Defendant justifies specially, that he being Vicar of N. the Plaintiffe procured I. T. and I. H. for to preach there, who in their Sermons inveyed against the Book of Common prayer, and affirmed it to be superstitious; upon which the Vicar inhibited them, for they had not license nor authority to preach, yet, they proceeded by the encouragement of the Plaintiffe; and the Plaintiffe said to the Defendant, *Thau art a false Varlet, I like not of thee*, to whom the Defendant said, *It is no marvel though you like not of me, for you like of those (innuendo, the aforesaid I. T. and I. H.) that maintain sedition (innuendo seditiosam illam doctrinam) against the Queens proceedings.*

Resolved in this case, that the Statute aforesaid concerning the King, the Judges *Ex officio*, ought to take notice of it, as they ought of all Statutes that concern him.

Resolved, that the justification is good, for in case of slander, the sence of the words is to be taken, which may appeare by the occasion of speech. *Sensus verborum ex causa dicendi accipiendus est, & sermones semper accipiendi sunt secundum subjectam materiam.* And here the sence of the words appeares, and his meaning in speaking them, and that he did not intend any publique or violent sedition, as the word of it selfe imports; and God defend, that the words of one by a strict and gramaticall construction, should be taken contrary to the manifest intent; as in an Action for calling the Plaintiffe murderer, 'tis a good justification that the Plaintiffe confessing that he had killed divers Haires with Engines, the Defendant said, *Thou art a murderer*, and the Defendant shall not be put to a generall issue, when he confesses the words and shewes that they are not actionable, as in maintainance the Defendant may justifie lawfull maintainance, whereupon the Plaintiffe replied that the Defendant, *dixit, &c. Verba prædict. de injuria sua propria absq; tali causa*, upon this they were at issue, and after agreed.

Cutler and Dixons Case, 27. and 28. of the Queene, fo. 14.

IF one exhibite certaine Articles to a Justice of peace, against one, declaring divers great abuses and misdemeanours, &c, to the intent to bind him to the good behaviour; In this case the party accused shall not have any action upon the case, for it is in pursuite of ordinary justice, and if such actions were permitted none would complaine for feare of infinite vexation.

Sir Richard Buckley and Woods Case, 33. and 34 of the Queen, fo. 14.

Wood exhibited a Bill in the Star-Chamber against Sir R. B. and charged him with divers matters examinable there, and with other matters not determinable there, as that he was a maintainer of Pirates, and Murtherers, and a procurer of Piracies, upon which Sir R. B. brought his action, &c. Resolved, that no action lyes for matter examinable there, though 'twas meerly false, because that 'twas in course of justice.

Resolved, that an action lyes for these words, not examinable there, for 'tis not done in course of Justice, and great inconvenience would follow, if matters may be inserted in Bills exhibited in so high and honourable a Court in Slauder of the parties, and they cannot answer there for their purgation, nor have their action for purging themselves of the crimes, and recover damages for the wrong, but that the said Bill shall remaine alwayes of record to their infamy, and here no murther or Pyracy can be punished upon any Bill exhibited in English, but he ought to have beene indicted, and therefore he hath not onely mistaken the Court, but also the nature of exhibiting the Bill, hath not appearance of any ordinary course of justice, but no action lyes upon an appeale of murder, returnable in the *Common Bench*, for though the Writ is not returned before competent Judges, who may do justice, yet 'tis in nature of a lawfull Suite, namely, by Writ of appeale, wherefore judgement was given for the Plaintiffe. And in a Writ of error in the Chequer Chamber brought by Wood, 'twas resolved that Sir R. B. might have had a good action, but here, because the action was not up-

on the Bill exhibited at *Westminster*, but because he said in the Country of S. that his Bill was true, *In auditu quamplurimorum*, without expressing the said matters in particular, so that it was not any Slaunder, judgement was reversed.

Stanhop and Bliths Case, 27. of the Queene, fo. 15.

Master Stanhop (who was a surveior of the Dutchey and had divers Offices, and was a Justice of Peace) *Haith but one Mannor, and that he hath gotten by swearing, and forswearing.* Resolved that the action doth not lye, for they are too generall and words which charge any one, in an action in which damages shall be recovered, ought to have convenient certainty; and he doth not charge the Plaintiffe with swearing, &c. and he may recover a Mannor by swearing, &c. yet not procuring or assenting to it. Resolved, if one charge another that he hath forsworne himselfe, no action lyes. First, because he may be forsworne in usuall communication, *Quia benignior sensus in verbis generalibus seu dubiis est preferenda.* Secondly, it is an usuall word of passion, and choller as also to call another a Villaine, a Rogue, a Varlet, these and such like will not maintaine action, *Boni iudicis interest, lites derimere.* But if one say to another, that he is perjured, or that he hath forsworne himselfe in such a Court, &c. For these words an Action will lye.

*Hext Justice of Peace against Yeomans.
27. of the Queene. fo. 15.*

FOr my ground in H. Hext seekes my life, and if I could finde one I.H. I doe not doubt, but within two dayes, to arrest Hext for suspicion of felony. Adjudged that no action

action lyes for the first words ; 1. Because he may seek his life lawfully upon just cause, and his land may be holden of him. 2. 'Tis too generall, and the Law inflicts no punishment for seeking of his life ; but adjudged that the action lyes for the last words ; for, for suspicion of felony, he shall be imprisoned, and his life in question.

Birchleys case. 27. and 28. of the Queen. fol. 16.

THe Defendant said to B. (Clerke of the Kings Bench, and sworne to deale duely without corruption) *you are well knowne to be a corrupt man, and to deale corruptly*, Adjudged that the action lyes ; 1. Because the words, *Ex causa dicendi*, imply that he hath dealt corruptly in his profession, *Et sermo relatus ad personam intelligi debet de conditione persone* ; 1. This touches the Plaintiffe in his oath ; 2. The words Scandalize him in the duty of his profession, by which he gets his living. *Skinner of London* said, that *Manwood was a corrupt Judge* ; adjudged actionable. Resolved in this case, that if the precedent parlance had been, that B. was a userer, or executor of another, and would not performe the will, and upon this the Defendant had spoken the words following, no action would lye.

Weaver and Caridens case. 37. of the Queene. fo. 16.

A Judged, that no action lyes, for saying that the Plaintiffe was detected for perjurie in the Starre-chamber ; for an honest man may be detected, but not convicted.

*Stuckley and Bulheads Case. 44. and 45. of the
Queen. fo. 16.*

ADjudged, that an action lyes for saying, *Master
St. (he was a Justice of Peace) covereth and hideth
felonies, and is not worthy to be a Justice of Peace;* for this
is against his Oath, and his office, and a good cause
to put him out of commission, and for that he may
be indicted and fined.

Snagg and Gees case. 39. of the Queene. fo. 16.

THou hast killed my wife, and art a Traitor. Adjudged,
that the action will not lye, for the wife was in
life, as appeared in the Declaration, and so the words
vaine and no scandall, otherwise if shee had beene
dead.

Eaton and Allens Case. 40. of the Queene. fo. 16.

HE is a brabler and a quarreller; for he gave his Cham-
pion counsell to make a Deed of gift of his goods to kill
me, and then to fly out of the Country, but God preserved me.
Resolved, that the action will not lye, for the purpose
without act is not punishable, and though he may be
punished for such conspiracy in the Star-chamber.
yet this is by the absolute power of the Court, not
by ordinary course of Law. Observe well this case,
and the cause and reason of this judgment.

Anne Davies Case. 35. of the Queene. fo 16.

THE Defendant said to be. (a Suitor to the Plaintiffe,
and with whom there was neare an agreement of
marriage); I know Davies daughter well, she did dwell in
Cheapside.

Cheapside, and a Grocer did get her with childe; and the Plaintiffe declared, that by reason thereof, the said B. refused to take her to wife.

Resolved, the action lyes, for a woman is punishable for a Bastard, by 18. of the Queene, *ca. 3.* And though that fornication, &c. is not examinable by our Law, because done in secer, and uncomely openly to be examined, yet the having a Bastard is apparant, and examinable by the said Act.

Resolved, if the Plaintiffe had been charged with nude incontineny onely, the action lyes, for the ground of the action is temporall, *viz.* the defeating of her advancement in marriage, By *Popham* an action lyes, for saying, that a womans Inholder, had a great infectious disease, by which she loses her guests. *Banister and Banisters case. 25. of the Queene.* Resolved, that an action lyes, for saying to the sonne and heire, that he was a Bastard, for this tends to his disinherison; but resolved, if the defendant pretend that the Plaintiffe is a Bastard, and he himselfe right heire, no action lyes, and this the Defendant may shew by way of bar.

James Case, 41. and 42. of the Queene. fo. 17.

THE Defendant said to B. *Hang him (innuendo praedict. I.) he is full of the Pox (Innuendo the French Pox) &c.* Resolved, two things are requisite to have an action for slander. 1. That the person scandalized be certaine. 2. That the scandall be apparent by the words themselves. And therefore if a man says, that one of the servants of B. is a notorious felon or traytor, an action lyes not (if he have more servants) and (*innuendo*) cannot make it certain. So, *I know one near about B. that is a notorious thiefe.* But if two speake of B. and the one sayes, *he is a notorious thiefe,* an action lyes,

lyes, and B. may reduce this to a certainty by (*innuendo prædict. B.*) for the office of an (*innuendo*) is for to designe the person that was named in certaine before, and in effect, stands in place of (*præd.*) but (*innuendo*) cannot make that certaine which was incertaine before, and subject to a deceiveable conjecture. But if one sayes to be. *Thou art a traytor*, an action lyes, for *constat de persona*. So here, when two speake of the Plaintiffe, and one sayes, *Hang him*, there (*innuendo*) will denote the person, but (*innuendo*) cannot extend for to make the intent to be the *French pox*, by imagination, which is not apparent by the precedent words; and the words themselves shall be taken in *mitiori sensu*.

*Oxford and his wife against Crosse. 41. of the
Queene. fo. 18.*

THe Plaintiffs brought an action in *London*, for calling the wife of the Plaintiffe *whore*; the Defendant removed this out of *London* by *habeas corpus*, a *procedendo* was prayed, because the action was maintainable in *London*, though not at common Law; denied by the Court, for such custome to maintain an action for brabbling words, is against Law.

*Sir G. Gerrard Master of the Rolls against Mary
Dickinson. 32. & 33. of the Queene. fo. 18.*

THe Plaintiffe counts that he was in communication with R. E. for to demise to him the Mannor, &c. The Defendant said (*Premissorum non ignara*) *I have a lease of 90 yeares of the Mannor*, and then shewed and published a Demise made by the Lord Audley, grandfather of the Lord A. from whom the Plaintiffe claimes, where in truth the defendant knew this to be

be counterfeit, by reason of which, &c. R. E. (did not proceed, &c. The Defendant pleaded, *Quod talis Indentura* (qualis in the count) came to his hands by trover, and traversed, that he knew of the forgery.

Resolved, if the defendant affirme and publish that the plaintiffe had not right, but that she her selfe had, no action lyes, though she hath no right, because she pretends title, for if an action should lye, how could any one claime or sue, or seek counsel for any land? *Banisters case* before resolved according, and therefore 'twas here resolved, that no action lyes for saying, *I have a lease*. &c. though it be false. And though it appears by the Barre, that she had no title, but is a stranger, yet, because the matter in the count doth not maintain the action, the bar shall not make it good.

Resolved; that there was other matter in the count sufficient to maintaine the action, viz. that the Defendant knew of the communication, and that the Lease was forged, and yet published, by which, the Plaintiffe lost his bargaine.

Resolved, that the bar was insufficient, for the knowing of the Defendant or forgery, is not traversable; as in an action, for that the Dogge of the Defendant had bit the beasts of the Plaintiffe, *Ipse sciens canem suum ad mordendas oves consuetum*. (*Sciens*) is not traversable, but it ought to be proved upon the generall issue, for (*Sciens*) is not a direct allegation, nor alledged in any place. And *talis indentura, qualis*, is no direct answer to the Indenture mentioned in the count, for *talis, non est eadem*, and no *simile est idem*.

Barhams Case. 44. & 45 of the Queene. fo. 20.

Master Barham did burne my barne (innuendo a barne with corne) with his owne hands; and now he is Moved.

Moved in arrest of judgement that the words were not actionable, for 'tis not felony to burn a barne, if it be not parcell of a mansion house, or full of corne; and in such case *agitur civiliter*, not *criminaliter*, & *verba accipienda sunt in mitiori sensu*. And the (*innuendo*) will not serve, when the words are not slanderous

Britteridges Case. 44. & 45. of the Queene. fo. 19.

B Is a perjured old knave, and that is to be proved by a stake parting the Land of A. and B. Resolved, that the action lyes for the first words. And adjective words will maintaine an action, when they presume an act committed (as here) or when they scandalize a man in his office, or function, or trade, by which he acquires his living. *Philips*, Batchelor of Divinity, brought an action against B. for saying; *Thou hast made a seditious Sermon, and moved the people to sedition this day*; adjudged the action lyes, because, though the first part of the words were merely adjective, they scandalized him in his function. So, if a man sayes to a Merchant, that he is a *bankruptly knave*, or a *bankrupt knave*, as 'twas adjudged in *Mittons case*, or that he will be a *bankrupt* within two dayes; but an action lyes not when these adjective words import not an act done, but an inclination, which doth not scandall him in his function, &c

Resolved, in the case at barre, that upon all the words together, no action lies, for the last words expaine his intent to be, if no judicall perjury. And 'tis not possible that a stake can prove a man perjured; as it hath been adjudged; *Thou art a Thiefe, for thou hast stolen my apples out of my Orchard*; or *robbed my Hop-ground*, *Dobbins and Franklins case, 43. & 44. of the Queene*, But if the counsel of the Plaintiffe had disclosed the truth of the case in the count, an action would

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would lye, for in truth, there was a controversie betwixt two, whether the stake stood upon the land of the one, or the other, or as an indifferent boundary, and the Plaintiff was deposed in an action for this, as a witness; and by the pretence of the Defendant, had perjured himielfe in his Deposition.

*Palmer and Thorpes Case. 25. of the Queene. fo. 20.
touching defamation in the Ecclesiasticall Court.*

Resolved, that such defamation ought to have three incidents. 1. That the matter be meerly spirituall and determinable in the Ecclesiasticall Court, as for calling Heretique, Schismaticke, advowterer, fornicator. 2. It ought to concerne matter meerly spirituall onely, for if it concerne any thing determinable at common Law, the Ecclesiasticall judge shall not have consufance of it. See for this 22. E.4. 20. the Abbot of St. *Albanes case*. 3. Though the thing be meerly spirituall, yet he which is defamed cannot sue there for amends, or damages, but the suite there ought to be onely for punishment of the offender, *Pro salute anima*. For this, see *Articulis cleri*, & *circumspēte agatis* and Fitz. 51, 52, 53. But the Plaintiff shall recover costs there, and there if the defendant. to redeeme his pennance, agree to pay a certaine summe, the party may sue for this there, and no Prohibition lyes.

Copyhold Cases.

Browns Case. 23. & 24. of the Queene, fo. 21.

Copy holder in fee, by licence, leases for yeares, and dyes, the eldest Sonne dyes before admittance,

rance, adjudged that the daughter of the intire bloud shall have it, not the younger sonne. Resolved, though a Copy-holder, in judgement of Law, hath but an estate at will, yet custome hath so established and fixed his estate, that by the custome of the Mannor 'tis descendable to his heires, and is not meerly *ad voluntatem Domini*, but, &c. *secundum consuetudinem manerij*; so the custome is the soule and life of Copy-holds. See the book at large, for what antiquity Copy-holds are, and some generall learning concerning them.

Resolved, when custome hath created such inheritances, the Law shall direct the descent according to the Maximes and rules of the common Law, as incident to every estate descendable. When uses had gained a reputation of inheritances, the Law directed the descent, and of them there shall be a *possessio fratris*. But Resolved, that such customary inheritances shall not have any collaterall qualities, which doe not concerne descent of inheritance, which other inheritances have; and therefore they shall not be affers to the heire, upon an obligation, nor there shall not be Dower, nor reuency by the curtesie, nor a descent shall toll entry, &c. For, as without custome, they cannot descend, so without custome, they cannot have a collaterall quality; for Copy-holders have inheritances *secundum quid*, viz. to descend to the heires, and not to be determined by the will of the Lord, nor *simpliciter*, to a collaterall quality.

Resolved, that the heire, before admittance, may take the profits, and may surrender to the use of another, before admittance; but this shall not prejudice the Lord for his fine upon the descent, and he is a tenant by Copy of Court-roll, for the roll made to his auncestor belongs to him, and admittance of tenant for life shall serve for the remainder, yet, it shall not prejudice the Lord for his Fine. And though
'twas

'twas objected, that every admittance amounts to a grant, and so may be pleaded, and therefore nothing vests before admittance, yet, 'twas resolved, that, as after admittance, the heire may in pleading alledge this as a grant, and this to avoyd inconveniences (for, if he should be compelled to shew the first grant, it was before time of memory, and so not pleadable, or if within memory, then the custome failes) yet, he may alledge the admittance of his auncestor, as a grant, and shew the descent to him, and that he entered, and this without admittance, but he cannot plead, that his Father was seised, &c. by Copy, &c. and dyed seised, and that this descended, &c. For in truth, 'tis but a particular estate at will in judgement of Law, though descendable by custome.

Ryvets Case. 24. of the Queene. fo. 22.

A Greed, that a husband shall not be tenant by the Curtesie of a Copy-hold, without speciall custome.

Deale and Rigdens Case. 36. of the Queene. fo. 23.

A Djudged, that if a recovery be in plaint, in nature of a reall action, against tenant in taile (admitting Copy-hold may be intailed) that this is a discontinuance, for, in as much as plaints are warranted by custome, 'tis incident, that it should make a discontinuance. The like judgement was between *Clun* and *Pease*.

Bullock and Dibleys Case. 35. of the Queene. fo. 23.

R Esolved, that a surrender by the husband is no discontinuance to the wife, nor her heires. And if a
I Copy-

114 *Gravenor and Teds Case.* Lib.4.

Copy-holder for life surrender to the use of another in fee, this is no forfeiture, for it doth not passe by livery. And Copy-holders have not such quality, without speciall custome; so also adjudged in severall cases.

Gravenor and Teds Case. 35. of the Queene. fo. 23.

RESolved, that the descent of a Copyhold, doth not toll entry; and that where the custome was, that he may grant in fee simple, that he may, by the same custome, grant to a man and the heires of his body; for be it a fee simple conditionall, or a taile, 'tis within the custome, so, of a grant for life, or yeares, for fee simple includes them.

Finch and Huckleys case. 36. of the Queene. fo. 23.

RESolved, that admittance of a Copyholder for life, is an admittance of him in remainder, but not to prejudice the Lord for his Fine. And that upon a surrender, to the use of himselfe for life, and after to the use of his last will, that the fee remaines in the Copyholder, not in the Lord.

Clarke and Pennifathers case. 26. of the Queene. fo. 23.

RESolved, that the heire of a Copyholder may enter, and have trespass, before admission, and if the heire (as the principall case was) dye before admission, his heire may take the profits, and have trespass. And *Wray* said, that 'twas adjudged, that there shall be *possessio fratris* of it. Resolved, that where *H. 8.* granted a Mannor to the Queene for life, that the Queene was a sole person exempted by common law, and may make a lease or grant, without the King, and may

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may plead, and be impleaded : and that 32. H. 8. is but a declaration of the common Law.

Adjudged, that a grant of a Copy hold in fee, escheated to her, by the Queene tenant for life, bindes the King, his heires and successors, for she was *domina pro tempore*, and the custome of the Mannor bindes the King. And that every one, who hath a lawfull interest in a Mannor, &c. though but at will, may grant Copy-holds escheated, &c. rendring the auncient rent, customes, and services, and this shall binde the Lord, for, he is *dominus pro tempore*. For, a Copyholder derives not his interest out of the estate of the Lord onely, but out of the custome, and the grantee is in by that, without regard to the estate or person of the grantor ; and therefore such a grant by the husband shall binde the wife ; so, of Infants, *non compos mentis*, Bishop, Prebend, Parson, shall binde for ever, for the custome is, that the tenements are parcell of the Mannor, and demised, and demisable, &c. But the Lord must have a lawfull estate ; for, if a disseisor, or Feoffee of a disseisor, &c. makes such grants, this shall not binde him that hath right, after a recontinuance of the Mannor ; but admittances by such upon a surrender, or of the heire shall binde, &c. for they are lawfull, & *quodam modo* judicall acts, which to doe, he may be compelled in a Court of equity.

P. 26. of the Queene. fo. 24.

ADjudged, if a Lord takes wife, and a Copy-holder for life (according to the custome) dyes, and the Lord regrants for lives, and dyes, that the wife, in Dower, shall not avoyde these grants, for though the grant were after the title of Dower, yet, the custome was before. If a Feoffee upon condition, makes a voluntary grant, the condition is broken, the Feoffor, recenters, the grant shall stand.

116 *Rous and Arters Case.* Lib. 4.

Rous and Arters case. 29. of the Queene. fo. 24.

ADjudged, that if tenant *pur auter vie* of a Mannor, after the death of *cestuy que vie*, continues in, and holds Courts, and makes voluntary grants, this shall not binde the lessor (otherwise of admittances upon surrenders, or descents) for he was tenant at sufferance, who hath no lawfull interest, and a Writ of entry *ad terminum qui præterit* lyes against him, and so he is a desorkeor.

Murrell and Smiths case. 33. and 34. of the Queene. fo. 24.

THe Queene grants a Copy-hold, in fee, and after grants the inheritance of the Copy-hold to a stranger ; the Copy-holder devises to M. and after surrenders to the use of his will. Resolved, that custome hath so established the estate of a Copy-holder, that by severance of the inheritance of the Copy-hold, from the Mannor, the Copy-hold is not destroyed, for, being the Lord himselfe could not ouste the Copy-holder, no more can another claiming in by him. Objected, that every Copy-hold ought to be parcell of the Mannor ; and to be demised, or demisable, time out of memory. Resolved, that because once this had both the incidents aforesaid, and its perfection, the severance made by the Lord, shall not destroy it.

Resolved, that notwithstanding the surrender, and devise, the Copy-hold descended to the heire, for after the severance of the inheritance, from the Mannor, the surrender was utterly voyd, for, the land was not parcell of the Mannor at the time, and the devise onely cannot transerre such a customary estate, but it ought to be by surrender into the hands of the Lord, &c.

Resolved.

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Resolved, that after severance, the Copy-holder shall pay his rent to the Feoffee, and shall pay, and do other services which are due, without admittance, or holding of a Court, as to plough the demeanes of the Lord Heriot, &c. but suite of Court, and Fine upon alienation or admittance, are gone, for now the land cannot be aliened, for, though the Copy-holder hath some benefit by the severance, as appears before, so he hath great prejudice, for now he cannot surrender, or alien his estate, nor the Feoffee cannot make an admittance, for he is not *dominus pro tempore*.

Resolved, that such forfeitures remaine, as were before the severance, as Feoffement, lease, waft, denier of rent; So, if the land were of the nature of Borough English, or Gavelkind, and other customes which run with the land remaine. And 'twas said that such Copy-holder hath no other meanes to alien, but by Decree in Chancery against him and his heires, but, by this, the interest of the land is not bound, but the person onely.

Kite and Queintons case. 31. of the Queene. fo. 25.

Copy-holder in fee surrenders out of Court, by the custome, to the hands of certaine Copy-hold tenants, to the use of another and his heires, upon certaine condition, at the next Court. the surrender was presented, but the condition omitted, he, to whose use, &c. dyes, the Lord admits his heire, he that made the surrender releases to the heire being in possession, and after enters.

Resolved, that the presentment of the surrender was voyde, for that the condition was omitted, for, the surrender that the Copiholder made, was not presented, but if the surrender & the condition had been presented, and the Steward in entring of it, omits the

condition, upon sufficient prooffe of it, the surrender shall not be avoyded, but the roll amended, for the roll doth not conclude the party for to plead, or give in evidence the truth of the matter.

Resolved, if a Copy-holder be ousted by wrong, a release by him to the disseisor, doth not transerre his right, because, he hath not any customary estate, upon which the release of the customary right may inure; and this should be prejudiciall to the Lord, for, by this, he shall lose his Fine and services; but a release made to him which is admitted by the Lord, and in possession, is good; and a release of a customary right may inure to him, and the Lord not prejudiced, and the release shall inure by way of extinguishment. And *Littleton* speaks of an alienation by surrender onely, which ought to be into the hands of the Lord; but a release cannot be done to the Lord; and *Littleton* says, He which claimes a Copyhold by surrender, hath no other evidence, but he which claimes an extinguishment of a right, may have it by release, by Deed; and 'tis no perill to purchasors, for if the Copyholder in possession sels it, he will shew the release, and he which is out of possession cannot sell, till he hath regained the possession, & caveat emptor. By *Wray*, if he which hath a pretended title, &c. to a Copy hold, bargaines, &c. this is within 32. H. 8. for the Statute says (any right or title) and great part of the land within the Realme is in Copy, and therefore the intention was to include them, to avoyde maintenance and champerty.

Melwich and Luters case, 30. of the Queene. fo. 25.

RESolved, that the lessee of a Copiholder for a yeare, shall maintaine an *Ej. Firmae*, for his terme being warranted by Law, by force of the generall custome of

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of the Realme, 'tis reason that he should have remedy by *Ej. Firma*. And this is a speedy course against a Stranger. Resolved, that the Copiholds are not destroyed, by severance of the inheritance of them from the Mannor, but remaine in force. So *Murrels case* before adjudged.

Resolved, that when the Lord of a Mannor having many ancient Copiholds in a Towne, grants the inheritance of all the Copiholds, the grantee may hold a Court for the customary tenants, and accept surrenders, and make admittances, and grants; for every Mannor which consists of Freeholders, and Copiholders, comprehends in effect two severall Courts, the one, the Court Baron, for Freeholders, and in this, the Suitors, *viz.* the Freeholders are Judges, and the other Court for the Copiholders, and in this, the Steward, or the Lord himselfe is Judge; and though this is not a Mannor in Law, because it want's Freeholders, yet, the grantee, may hold such Court, as aforesaid, for Copiholders onely, as the grantor himselfe might. So, if all the Freeholds escheate, or the Lord releases the tenure, and services, yet, he may hold a customary Court for the Copiholds. *Note (Reader)* though the Lord, by his own act, cannot make, of one and the same Mannor at Common Law, divers severall Mannors, consisting of Demeanes and Freeholders, yet, he may make a customary Mannor of Copiholders.

Resolved, that the Lord himselfe may make a grant, or admittance, of a Copiholder, out of the Mannor; at what place he pleases; but, if the Steward, at any Court, holden out of the Mannor shall make grants, or admittances, they are voyd.

Neales Case. 37. of the Queene. fo. 26.

ADjudged, that where the Lord of a Mannor demises all his lands, granted by Copy, for two thousand yeares, that the lessee may hold Courts for Copiholders (as *Melwiches case* is before) and 'twas said so to be resolved in *C. Hattons case*. Note (Reader) a good diversity, where the number of the Copiholders may support the custome, and a singular case of a Copiholder (as in *Murrels case* before) in which case, the Lord doth not grant tacitly any customary Court.

Clifton and Molineux case. 27. & 28. of the Queene. fo. 27.

RESolved, if a Steward hold Court out of the Mannor, all grants and admittances there made, are voyd, for, the Court ought to be holden within the Mannor, not out of the jurisdiction of it (as *Melwich case* is before) but, resolved that by custome, the Court may be holden out of the Mannor, and grants, &c. shall be good, as *Abbots, &c.* used for to hold Courts at one Mannor, for divers severall Mannors. Resolved, that if a woman Copiholder for life, takes husband, who commits wast, and dyes, the Copihold is forfeited, otherwise, if a stranger does wast, without the assent of the husband.

Taverner and Cromwells Case, 26. of the Queene. fo. 27.

RESolved, if a Copiholder, seised of three severall Copiholds, of three severall acres, makes wast in part of one, &c. all that is forfeited, but not the others, for though they are all in one hand, yet every one is severally holden, and a severall condition in

Law

Law annexed, and the severall conditions follow the severall tenures. So, resolved, if the Copyholder surrender them to the use of A. and the Lord admits A. *Tenendum per antiqua servitia inde prius debita & de-jure consueta*; and A. makes a forfeiture in one, he shall forfeit that onely, for, the *Tenendum* (*reddendo singula singulis*) continues the severall tenures, so that 'tis not materiali, if the copiholds are in one, or severall copies. So if diverse severall copiholds escheare to the Lord, and he grants them *Tenendum per antiqua servitia*, they shall be severally holden as they were before, though he grants them to one man.

Resolved, that when he to whose use a surrender is made, is admitted, he is in by him that surrendered, and in a plaint in the nature of an entry in the *Per*, shall be supposed in by him, for the Lord is but an instrument to make the admittance, and his charge shall not binde him that is admitted. So (Reader) where before 'tis said, that by the forfeiture of the Husband, all the estate of the Wife shall be forfeited, 'tis to be intended, all the copihold under the same tenures.

*Hubbard and Hamonds Case, 42. and 43. of the
Queene. fo. 27.*

RESOLVED, that if the fines of copiholders upon admittances, be incertaine, the Lord cannot exact excessive and unreasonable fines, if he does, the copiholder may deny to pay it, without forfeiture, and it shall be determined before the Judges, upon a Demurrer, or evidence upon prooffe of the value of the Land what fine was reasonable to be demanded; for if it should be otherwise, great part of the Copy-holds should be destroyed at the will of the Lord, and so was *Hodesons Case* adjudged.

Resolved, if the Lord asseffe a reasonable fine, and re-

122 *Westwick & Wyers Case. Lib.4.*

require the Copy-holder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assesse, & *nemo tenetur divinare*, and he shall have a convenient time to pay it, if the Lord limits no time, otherwise of a fine cerraine.

Resolved, if a Copy-holder hath severall Copy-holds, by severall services, the Lord ought to assesse and demand fines severally for every parcell, and the tenant may refuse to pay his fine for one, and forfeit that onely, and every severall tenure hath severall conditions in law tacitely annexed to it. So, if all the severall Copy-holds are surrendered to the use of another, and the Lord admits him, *Tenendum per antiqua servitia, &c.* the tenures are severall and fines severall. *Taverners ca.* before. Resolved, that no fine is due to the Lord till admittance, for admittance is the cause of the fine, and if after the tenant deny to pay it, 'tis a forfeiture. *Bacon and Flatmans Case*, and *Sands Case* so resolved.

Westwick and Wyers Case, 43. of the Queene. fo. 28.

A Woman Copy-holder in Fee, surrenders to the use of W. her Sonne in fee, and at the next Court, the entry was, *Ad hanc curiam venit, W. and I uxor ejus, & ceperunt, &c.* W. dyed, I. his Wife survived, and surrendered to the use of I. S. in fee. Resolved when the Lord hath the Copy-hold by surrender, to the use of another, he hath but a customary power, to make admittance, *Secundum formam & effectum sursum redditionis*; and 'tis not like to the Feoffee at common Law, and though the Lord grant this by Copy to another, 'tis without warrant, and notwithstanding he might make an admittance, according to the surrender, and he which is admitted shall be in by him that surrendered (as *Taverners Case*

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Case is before) and the Court agreed, if the Lord grant to *Cestuy que use*, and a stranger, all shall inure to *Cestuy que use*, or if he admits him upon condition, the condition is voyd. As Executors agree that the legatory and I. S. shall have, &c. or, that the legatory shall have upon condition, the legatory shall have onely and absolutely, for, after the assent of the Executors, he is in by the Devisee. And 'twas said, that 'twas adjudg'd in *Buntings Case*, that where the Lord admits one to hold to him and his Heires, (where the surrender was for life onely) that he hath but for life. Resolved, that without speciall custome, or other speciall matter, the admittance shall inure onely to the Husband ; and judgement was given according.

*Bunting and Lepingwells Case, 27. and 28. of the
Queene. fo. 29.*

RESolved, that though T. who was Husband of the Wife, *De facto* was not party to the Libell (for I. S. Libelled against the Wife, without naming her Husband, for a divorce, upon a precontract betwixt him and the Wife) nor the sentence in the Spirituall Court, which dissolved the Marriage betwixt him and his Wife, yet the sentence against the Wife onely, being but declaratory shall binde the Husband *De facto*, and for that the consufance of the right of Marriages belongs to the spirituall Court, and they have given sentence in it, the Judges of the common Law, (though it be against the reason of the Law) shall give faith and credence to their proceedings and sentences, as consonant to the Law of holy Church ; for, *Cuilibet in sua arte perito est credendum*. So, 'twas adjudg'd that the Plaintiffe (borne in the second Marriage) was legitimate.

Re-

Resolved, when a Copyholder surrenders to the Lord, to the use of his Wife and his younger Sonne, without limiting any estate, they have for life onely, for, as well estates as discent, shall be directed by the rules of Law, as necessary consequents upon the custome, except there be a speciall custome within the Mannor, that *Sibi, & suis*, or *Sibi, & assignatis*, may create an estate of inheritance. And 'twas observ'd, that the Estates limited upon surrenders, are alwayes annexed to the estates of him to whom the surrender is made, and alwayes the surrender to the Lord is generall, without limitation of any estate. Resolved, that when the Lord admits *Cestuy que use*, for life, the reversion is in him that surrendered, not in the Lord, for he is but an instrument.

Resolved, that a man may surrender to the use of his Wife, though that *Cestuy que use*, is in by him that surrendered, because the Husband did not doe this immediatly to the Wife, but by a second meanes, *Viz.* By surrender to the Lord, and by admittance of the Lord.

Resolved, that when B. surrendered out of Court, and before that 'twas presented in Court, he dyes, yet after, being presented according to the custome, 'tis good, otherwise, if it had not been presented according to custome; so, if the Tenants in whose hands, &c. dyes, yet if it be proved, 'tis good enough; so *Queintons Case* before, if *Cestuy que use, &c.* dyes, before admittance, his Heires shall be admitted.

Downe and Hopkins Case, 36. of the Queene. fo. 29.

Resolved, that where the custome of a Mannor was, to grant Copies for one, two, or three lives, that a grant to a Woman during her viduity, is within the custome, for 'tis an estate for life, but every grant for life

life is not *Durante viduitate*, issue was, whether the custome was, that the Wife of a Copy-holder after the death of the Husband, should have for life, and 'twas given in evidence, that she should have during her viduity, and adjudged that the evidence did not maintaine such custome, for 'tis a lesse estate then for life. But in the principall Case, 'tis a greater estate which is warranted by the custome, and therefore a lesse is within it (according to *Graveners Case* before.) 'Twas said, that a Lord may retaine a Steward by word, to hold Courts, &c. as a Bayliffe, and this retainer shall serve till he be discharged.

Harris and Jayes Case, 41. of the Queene. fo. 30.

Resolved, that a Lord may retaine one to be Steward of his Mannor, and to hold Courts by word, as in the Case before. Resolved, that where a Copyhold escheates by attainder of felony of a Copy holder of the Queene, that the Steward may grant it over, *Ex officio*, without speciall warrant, for the custome warrants the Steward to grant it, and this shall binde the Queene and her Heires, &c. But yet his duty is before to informe the Lord Treasurer, Chancellor, or Barons of the Exchequer, or any of them, for his better direction.

Resolved, that the Auditor or Receiver of the Queene hath no power to retaine a Steward to hold Courts, &c. But it behooves that the Steward (who makes such voluntary grants upon escheats, or forfeitures to be good) to have Letters Pattents of the Stewards of the same Mannor.

And 'twas said, that 'twas adjudged in the *Lady Holcrofis Case*, that where one was retained generally by word, to be Steward of a Mannor, and to hold Courts, that he may take surrenders of customary tenants out of Court.

Shaw

Shaw and Thompsons Case, 33. of the Queene. fo. 30.

RESolved, that a Woman shall not be indowed of Copy-hold without speciall custome, and that when a Woman is to be indowed by custome, shee shall have all incidents to Dower, and shall recover damages by the Statute of *Merton*, because her Husband dyed seised, and therefore the recovery of damage of 50. *l.* in the Court of the Mannor, was allowed, though this exceeded 40. *s.*

Resolved, that no Action of Debt lyes for these damages at common Law, for upon such judgement no error or false judgement lyes, but the remedy is, in the Court of the Mannor, or Chancery. *Fenner Justice*, said, That he had seene a Record. 36. *H. 8.* where the Lord by Petition to him, had for certaine errors in the proceeding, reversed such a judgement, and upon this, the Defendant maintained an *Audina querela*, to be restored to the damages recovered against him. See 14. *H. 4.* cited before in *Brownes Case*. And 7. *E. 4.* 29.

Hee and Taylors Case, 37. of the Queene. fo. 30.

RESolved, that Underwood growing upon parcell of the Mannor, may by custome, be granted by Copy of Court roll; and 'tis a thing of perpetuity, to which a custome may extend, for after every cutting the underwood growes, *Ex stipitibus*. So, 'twas resolved that Herbage, or any profit of any parcell of the Mannor may, by custome, be granted by Copy; and 'twas said, that a faire appendant to the Mannor of C. in S. is granted by Copy, and this explains the reason of the first pillar in *Murrels Case*.

Frenches Case, 18. & 19. of the Queene. fo. 31.

RESolved, if the Lord Lease for yeares, life, or make any other estate, by deed, or without deed, of Copy-hold Land forfeited, escheated, &c. to him, that this Land can never be granted againe by Copy, for the custome is destroyed, for during these estates, the Land was not demised, nor demisable by Copy. So, if the Lord make a feoffement, and enter for condition broken; but if the Lord keepe it in his hands a long time, or leases it at will, he, his heires or assigns, may regrant it. So, if the interruption be tortious, as by disseisin, and discent, false verdict or erroneous judgement: for, *Non valet impedimentum, quod de jure non sortitur effectum, & quod contra legem fit, pro infesto habetur.* But if it be extended upon a Statute, or recognizance acknowledged by the Lord, or if the Wife of the Lord hath this Land assigned to her in Dower, though these impediments are by act in Law, yet for that the interruptions are lawfull, the Land cannot be after granted by Copy. If a Copy-holder accept a Lease for yeares of the Lord, of his Copy-hold, 'tis destroyed for ever. If a Copy-holder take a Lease for yeares of the Mannor, his Copy-hold hath not continuance, *Hides Case* adjudged, 17. of the Queene. But there 'twas resolved, that such Lessee might regrant the Copy to whom he would, for the Land was alwayes demised or demisable. If a Copy-hold be surrendered to the Lessee, his Executors or assigns may regrant it. If a Copy-hold escheate to the Lord, his alienee by fine, feoffement, &c. may regrant it.

*Foiston and Crachroodes Case, 29. and 30. of the
Queene. fo. 31.*

ADjudged, that where a Copy holder in pleading alledges, *Quod infra Man. præd. talis habetur nec non a toto tempore cujus &c. habebatur consuetudo, Viz. quod quilibet tenentes prædictorum tenement. vocat. C.* have used to have common, in such a place, pareell of the Mannor, and that he is a Copy-holder of the said Tenement, that this custome, as well for the matter as the forme, was good; for the Copy-holder cannot prescribe in his own name, for the exility and basenes of his estate, and if he had claimed common in the soile of another, he ought to prescribe in the name of the Lord, *Viz.* That the Lord, and all his auncestors, and all those whose estate, &c. have had common in such a place, for him, and his Tenants at will; but when he claimes this in the soile of the Lord, he cannot prescribe in the name of the Lord, for the Lord cannot prescribe to have common, &c. in his own soile; and therefore he ought to alledge, that within the Mannor there is such a custome.

Note, a good diversity betweene a prescription which is personall, and alwayes made in the name of a certaine person, or his auncestors, or those whose estate, &c. and a custome which is locall and alledged in no person, but that within the Mannor, there is such a custome, this shall serve for those who cannot prescribe in their own name, nor in the name of any person certain, as the Inhabitants of a Towne. Also, the allegation of a custome, shall serve, when 'tis referred to a thing insensible, *Viz.* that all such Lands are devisable. And, for that in the principall case, the custome may have a lawfull commencement, that one copy-holder onely shall have common, esto-

vers;

vers, or other profit in the land of the Lord and that in many Mannors; some Copiholders have common in one wast of the Mannor, and others, in another severally, so that the custome cannot be applyed to all, and because, that all the other Copiholds may be determined and extinct, 'twas adjudged, the custome was well alledged. So, to have common of estovers, in the wood of his Lord parcell of the Mannor, &c. was adjudged good, 10. of the Queene, as 'twas said.

Myttons Case, 26. Eliz.

Queene Elizabeth by Letters Patents did grant the office of the Clerkship of the County Court of Somerset to Mytton. with all fees, &c. for life. Arthur Hopton Esquire, Sheriffe of the same Shire interrupted him, because it was incident to his office. Mytton complained to the Lords of the Councell, and it was referred to the two chiefe Justices, Wray and Anderson. And after many arguments concerning the validty of the grant, and conference had with all the oter Justices. It was resolved by all the Justices, *Nullo contradicente aut reluctante*, that the said Letters Patents were voyd: And their reasons were, that the office of the Sheriffe was an ancient office before the Conquest, and of great trust and authority, for the King committeth unto him *Custodiam Comitatus*: And though the King may determine the office *ad beneplacitum*, yet, he cannot determining this in part, as for one Towne, or Hundred, nor abridge him of any incident to his office; for the office is entire, and ought to continue so without any fraction, or diminution without by Parliament, and the County Court, and the entring of all proceedings therein, are incident to the Sheriffs office, &c. And though 'twas granted when

the office of the Sheriffe was void, yet, the new Sheriffe shall avoyd it; as *Scroges case*, in the time of vacation of the office of the *Chiefe Iustice* of the *Common Bench*, *Queene Mary* granted the office of the *Exigenter* of *London*; resolved, that the next *Chiefe Iustice* shall avoyd it, for 'twas incident to his office.

Also in all Writs directed to the Sheriffe concerning the County Court, the King sayes, *in comitatu tuo*, and in retourne of exigents made by him, he sayes, *ad comitatum meum* tenet. &c. and the style of the Court proves it, and by the Statute of 33. H. 8. the Sheriffe of *Denbigh* shall keepe his *Shire Court* at, &c. In a false judgement 'tis said, *in pleno com' tuo recordari facias*, &c. and in a precept of *Tolt*, 'tis said, *summoneas*, &c. *quod sit ad comitatum meum*. And it should be very inconvenient, that another should have the custody of the entries, and Rols of Court, which may be imbefilled, and the Sheriffe responsible for them. And it was resolved that the custody of all the Goales within every County belongs to the Sheriffe by right, and are annexed and incident by the Law to the Sheriffs office, *vid. stat. An. 14^o. E. 3. ca. 10.*

Bozouns Case. 26. & 27 of the Queene. fo. 34.

A Portion of tythes in L. appertained to the Rectory of G. which was presentable, and the Queen was seized of the Rectory of L. *jure corona*, which was appropriated to the Monastery of W, and grants to E. *ex gratia speciali*, &c. *totam illam portionem decimarum*, &c. in L. &c. *Cum omnibus aliis decimis suis quibuscumq;* in L. tunc, *vel nuper in occupatione*, I. C. and that the patents shall be of force *non obstante aliquibus defectibus in non nominando, male recitando*, &c. *alicujus occupatoris*. and I. C. had never any tythes in L.

Resolved, that (in the occupation of I. C. referre
to

to all the sentence, and not onely to (*cum omnibus aliis decimis, &c.*) 1. Because (*illam*) demonstrate fully, that there ought to be words subsequent, to explaine and reduce in certainty what portion, by the intention of the Queene, should passe, viz. that which was in the occupation of I. C. and 'tis not satisfied till it be come to the full end of the sentence. 2. This conjunction (*cum omnibus aliis, &c.*) couples the last words to the former, and makes the words subsequent to referre to all the sentence. 3. If all the tythes in L. of the said Rectory should passe, the addition of the occupation of I. C. should be vaine, & *maledicta expositio, &c.*

Resolved, that by grant of (*portionem decimarum, &c.*) the tythes parcell of the Rectory of L. doe not passe, for (*portion*) properly signifies a part or portion in grosse, divided, and not parcell of the Rectory, and the Queene had not any portion in grosse, but all were parcell of the Rectory; And (*ex gratia speciali, &c.*) shall not extend by any strained construction, to make a thing passe, against the intention of the Queene expressed in her grant, and against the apt, proper, and usuall signification of the words of his grant.

Resolved, that because J. C. had not any tythes there, nothing passes, for admit that a portion should be taken for a part, then the effect of the grant is, *totam illam portionem decimarum in occupatione J. C.* and in truth, he never had any part, nothing (without question) passes, in case of a common person, a fortiori, not in the case of the Queene. As to the point, when a clause of *Non obstante* shall make the grant of the Queen, good, when not.

Resolved, when the King by the common Law cannot in any manner make a grant, there a *Non obstante* of the common Law, will not make the grant good, against the reason of the common Law; as the King

grants a protection in an Assise, or *Quare Impedit*, notwithstanding any Law to the contrary, 'tis void, for protection lyes not in these cases, for the losse which may come to the parties, by such great delay. But when the King may lawfully make a grant, but the common Law requires, that he be so instructed, that he be not deceived, there a *Non obstante* supplies it, and makes the grant good. As the King having made a lease for life, or yeares, grants the land, *Non obstante*, that it be in lease for life, yeares, &c. or if he grants the land, and further grants the reversion of it, depending upon an estate for life, yeares, &c. 'tis good. See the booke at large.

Resolved; when the words are not [sufficient, *ex vi termini*, to passe the thing granted, but the grant is voyd, there a *Non obstante* will not serve, as in the principall case; and the Pattents, were not holpen by 18. of the Queene. ca. 2. for Pattents of concealment are expressly excepted out of the Act.

Terringham's Case, 27. El. in Banco Regis, fol. 36.

Resolved, that prescription doth not make a thing appendant, except the thing which is appendant agree in quality and nature to the thing unto which it should be appendant, as a thing incorporate, as an advowson to a thing corporate, as a Manner, or as a thing corporate, as Lands to a thing incorporate as an office, these may be appendant, but every thing incorporate may not be appendant to a thing corporate, as common of turbary may not be appendant to Land, but to a Messuage or house, as it is holden 5. ass. 9. for the thing which is appendant ought to accord with the nature and quality of the thing to which it is appendant, and turves ought to be expended in a Messuage. The

The commencement of common appendant by the ancient Law ; was in this manner, (*viz.*) when a Lord of a Mannor infeoffed another of arrable Lands, to hold of him in Soccage, (*id est*) *per servicium socæ* the Feoffee *ad manutenend' servicium socæ* had common in the wafts of the Lord for his necessary beasts that did plowe and ayre his Lands, and this common, is of common right, and commenceth by operation of the Law, and in favour of tillage, and therefore it needeth not to prescribe in that, for so it is holden 4. H. 6. & 22. H. 6. as one ought if it were against common right. But it is onely appendant to the ancient arrable Lands, and onely for oxen, horses, kyne, and sheep, &c. And because it is against the nature of common appendant to be appendant and meadowe or pasture, and because that here, the prescription was to have common time out of minde to a house, meadowe, and pasture, as well as to arrable, by which it appeares to the Court, that there hath beene a house, meadow, and pasture, time out of minde, 'twas resolved that this common was appurtenant, not appendant. But if of latter times, men have builded upon some part of such arrable Lands, and some part thereof is employed to meadow and pasture; and this for maintenance of tillage (the originall cause of common) the common remaines appendant; and it shall be intended in respect of the continuall usage of the common for beasts leavant and couchant upon such lands, that at the beginning all was arrable. But in pleading he ought to prescribe that the same is appendant to Land, for though *terra dicitur a terendo, quia vomere teritur*, yet (*terra*) includes all, and is arrable, though converted to meadow, &c. For it may be plowed.

A man may prescribe to have common appendant to his Mannor, for all the demeanes shall be intended

arrable; at least, in construction of Law (*redd. singula singulis*) it shall be appendant to such demeanes which are ancient arrable, &c. And when a man claimes common appendant to his Mannor, no incongruity appears of his own shewing, as here. So common may be appendant to a Carve of land, which may containe pasture, meadow, and wood, but it shall be applyed to that, which agrees with the nature of the common.

Resolved, that common appendant may be apportioned, because 'tis of common right; for if a commoner purchase part of the Lands, in which he hath common, yet the common shall be apportioned, as well as if the Lord purchase parcell, if of the tenancy the rent shall be apportioned. And if A. a commoner enfeofee B. of parcell of his ancient Lands, the common shall be apportioned, and B shall have common *pro rata*. And 'twas agreed, that such common which is admeasurable, remains after severance of part of the land, to which, &c. But here, for that the common was appurtenant, 'twas adjudged, that by the purchase, all was extinct, for 'twas against common right; for, by the act of the parties, it cannot be in *esse* for part, and extinct for part.

'Twas said that *pertinens* is the Latine word, as well for appurtenant as appendant, and therefore *subiecta materia*, and the circumstances ought to direct the Court to adjudge the common, appurtenant or appendant.

Resolved, that unity of possession of the intire land, to which, &c. and of the entire land in which, &c. extinguishes the common appendant. By *Wray*, chiefe Justice, common for vicinage, is not appendant, but, for that it ought to be by prescription, 'tis resembled to common appendant, but common appurtenant, or in grosse, may commence at this day, by grant, or prescription.

prescription; and by him, the one may inclose common for vicinage, against the other: as hath been adjudged in *Smith and Redmans Case*. Resolved, that a man may chase out beasts that do him trespassse, with a small dog, and shall not be compelled to distraine them damage feasant.

Cases of Appeals and Indictments.

Brookes Case. 28. of the Queene. fo. 39.

Resolved, that in an appeale of Burglary; 'twas an insufficient count that the defendant *domum*, &c. *felonice & burgaliter fregit*, for it ought to be *burglariter*, or *burgulariter*, which is *vox artis*, as *murdravit*, *rapiuit*, which cannot be otherwise expressed.

Resolved, if the count had been sufficient, he being convicted once, should not be againe impeached; but here he was discharged upon the insufficient count. By *Wray*, Chiefe Justice, if, upon accident, a man and all his family are out of the house, and one, in the interim, breakes the house, and commits felony; 'tis burglary, for the indictment is, *domum mansionalem fregit*, and so 'twas resolved, 38 of the Queene, where a man hath two mansion houses, and servants in both, and in the night when the servants are out, &c. the house is broken, 'tis burglary.

Wetherell and Darlys Case 35. of the Queene. fo. 40

IN an appeale of murder, the Defendant was found guilty of homicide, and had his Clergy, after indicted, and arraigned for murder, pleaded this conviction; Resolved, that 'tis a good barre at common Law, and restrained by no Statute; the reason is, be-

cause the life of a man, shall not be brought twice in question for the same offence.

Younge's Case, 38. of the Queene, fol. 40.

AN Indictment that *dedit unam plagam mortalem circa pectus*, is sufficient, for 'tis incertaine whether it be in the necke, arme, or belly; and Indictments ought to be certain, and shew in what part the wound is, and the profundity and latitude, that it may appeare to the Court to be mortall, and one of the wounds incertainly alledged, makes the whole Indictment insufficient. 'Twas said, that the Indictment ought to have been, that if the party had not dyed of the first stroke, that he dyed of the other, and this is the common course.

Upon a sudden affray, if the Constable or any of his assistants in suppressing it, he killed, 'tis murder in Law, though the murderer knew not the party killed, for the Law adjudges it murder, and that he had malice, prepenſe, for that he opposed him against justice. So, in case of a Sheriffe, or any of his Bayliffs or Officers in execution of proceſſe; so, of a Watchman.

Walkers Case, 41. of the Queene, fol. 41.

Resolved, that an Indictment of murder (upon which the party was outlawed) that he stroke the dead in *sinistra parte ventris circa umbilicum*, was good, for *sinistra parte*, was sufficient, and the other superfluous, but in *Younge's* before, there was no certainty before the *Circiter*.

Heydons Case, 28. of the Queene. fol. 41.

Exceptions to the indictment, 1. Because 'twas taken before B. *Corona et in con. prad.* and doth not

not say, *de com'. præd.* Resolved, it shall be so taken by reasonable intendment, and the Writ *de coronatore eligendo*, is, *quia A.B. nuper unus Coronator'. in Com. duo diem clausit, &c.* and so 'tis taken in *Willoughbyes case* in *Plodon. 2.* because he doth not say, that E.S. (dead) *fuit in pace Dei & domina reginæ*: Resolved, that they are only words of forme, to amplifie the hainousnesse of the offence, not of substance, and perchance he was not in peace. 3. Because he doth not say. *felonice*, nor *ex malitia sua præcogitata dedit, &c.* Resolved, that the word (*et*) couples the sentences together, so that these words (*felonice & ex malitia, &c.*) first spoken referres to all the subsequent words, &c. and *tunc & ibidem* makes it cleare. 4. The profundity of the wound is not shewne; Resolved, it cannot be here; for all the panne of the knee was cut off. 5. 'Tis said, *tempore felonie præd. & muredredi*, where it should be *murdri*, Resolved, the first words were sufficient, and then *muredredum* being a word insensible is superfluous, and shall not hurt. 6. The wound was the fourth of August, the death the nineteenth of December, and the indictment is that T. M. &c, *tempore felonie & muredredi præd'. viz. 4. Augusti felonice fuer'. præsentis, &c. auxiliantes, &c.* 'Twas objected, that the death hath relation to the stroke; Resolved, that indictments have been often adjudged insufficient, when the stroke is one day, the death another, and the Jury conclude the death to be done the first day; But here it ought to have been, that they were, *præsentes & auxiliantes, &c. ad feloniam & murd'. præd'. and relation*, which is a fiction, shall make no man a felon. And *Wray* said, that without question, the yeare of bringing the appeale, shall be accounted from the death, not from the stroke.

Hume against Ogle 32. and 33. of the Queene. fo. 42.

ADjudged, that the count (that the defendant gave the stroke the 27 of September at D. in the County of N. and that her husband of the same stroke at D &c. dyed, and so the said defendant murdered him at D. aforesaid) 'twas repugnant and insufficient, for as it cannot be said, that he murdered him the first day as *Heydons case* is before) so neither at the place where the stroke was, but where he dyed.

Hudson and Lees Case. 31. of the Queene, fo. 43,

IN an appeale, H. counted that the defendant, &c. felonice maimed him in his left hand, the defendant pleaded, that before, &c. the plaintiff recovered in Trespasse for the same battery and wounding 200. l. and satisfaction acknowledged. Resolved, that the barre is good, for where the Plaintiff is to recover damage onely (as in this case of appeale) he shall not be twice satisfied for the same thing, *Nemo debet bis puniri pro uno delicto*. And here the wounding in the first action includes the mayhem, & more, and the defendant hath averred that the wounding in the first action, and the mayhem here is one.

Syers Case, 32. of the Queene, fo. 43.

RESolved, if the principall be pardoned, or hath his Clergy, the accessory cannot be arraigned, for *ut a Maxime, Ubi factum nullum, ibi fortia nulla, & ibi non est principalis, non potest esse accessorius*, and none can be principall before it be so adjudged by law, viz. by judgement upon verdict, or confession, or by Ouerlawry; and it suffices not, that in truth, he be principall.

pall; and the acceptance of pardon, or prayer of Clergy, is an argument, but no judgement in Law, that he is guilty. But, if the principall, after attainder, be pardoned, or hath his Clergy, the accessory shall be arraigned, for it appeares judicially that there was a principall.

Bibithes Case. 39. of the Queene fo. 43.

REsolved, that where the principall was found guilty of man slaughter, and not guilty of murder, and had his Clergy, the accessory shall be discharged, for till judgement, it doth not appeare judicially, that there was a principall. So if the principall upon his arraignment, confesses the felony, & before judgement obtaines pardon, or hath Clergy. Resolved, that there cannot be an accessor before the fact, in manslaughter, for 'tis upon a suddaine affray; and if premeditated, 'tis murder.

Vauxes case, 33. of the Queene. fo. 44.

REsolved, that where a man was indicted for poysoning another, perswading him that the potion mixt with Cantharides would cause him to have issue by his wife, the indictment (*nesciens præd' potum cum veneno fore mixtum, sed fidem adhibens præd'. persuasioni dissp. W. V. recipit, & bibit*) was sufficient, for 'tis not expressed that he received the poyson, for (*venenum præd'*) wants, and the words after (*immediate post receptionem veneni præd'*) are not sufficient to maintain an indictment, which ought to be certain, and not by implication.

Resolved, that *Vaux*, who perswaded, was a principal murderer, though he was not present at the receipt of the poyson, and here he cannot be accessory,
for

for there is no principall; and if any one had procured V. to doe it, he had been accessory before, which note, a speciall case, where principall and accessory both are absent at the time of the felony.

Resolved, that (*auter foits acquite*) here is no plea, for, he was discharged upon an arraignment upon this insufficient indictment, and the former acquittall, or conviction, ought to be lawfull, and the maxime is, That the life of a man shall not be twice in jeopardy for one offence, but here his wife was not in jeopardy. So, if a man be convicted by verdict, or confession, upon an insufficient indictment, and no judgement givent, he may be againe indicted and arraigned, for the Law wants its end; but, if upon such insufficient indictment, the felon hath judgement *quod suspendatur per collum*, and so attainted (which is the end of the Law) he cannot be indicted againe, &c. till this judgement be reversed; and upon such acquittall no conspiracy lyes.

Wrote and Wiggs Case, 33 & 34. of the Queen. fol. 45.

THE Defendant in an appeale of murder pleads that *auter foits*, by inquisition taken before the Coroner of the Queenes household, and B. one of the Coronors of M. he was indicted of Man-slaughter, which inquisition was certified to N. at the Goale delivery, and the defendant upon this was arraigned, confessed the felony, and had his Clergy, and it appears the arraignment, &c. was after the purchase of the Writ of appeal, and before the retourne.

Resolved, that *auter foits* convict of man slaughter, and Clergy, is a good barre in an appeale of murder, as 'twas adjudged in *Holcrofts case*. In which it was likewise resolved, that an inquisition taken before B. Coroner of the household, &c. and one of the Coronors

nors of M. is well taken, and within the Statute of *articuli super chartas*; though the Statute requires two persons; for the intent of the Act was performed, and the mischief recited avoyded, for though the Court removes, yet, he may proceed as Coronor of the County.

Resolved, also upon the Statute of 3, H. 7. ca. 1. that this case was out of the Statute; for if the defendant had his Clergy, the appeal lyes not, *a fortiori*, when he is convicted onely, and prayes his Clergy; and the act of the Court to be advised as to the allowance of Clergy, (so the case was) shall not prejudice the party in case of life: and 'twas resolved, that attain of murder in the act, extends to a person convicted by confession, or verdict, as to a person attaint, for he which is attainted, is convicted and more. And *Agnes Gainfords case* adjudged, that where 3. H. 7. is, *That the wife, or heire of him so slaine shall have appeale*, that the heire of a woman, &c. shall have it against him, who was acquitted of the same murder. Soreolved here, an indictment and conviction, or acquittance of Man-slaughter, is a barre to an indictment of the same death, for all is the same felony, though the circumstance alter it.

Resolved, that at common Law, the Coronor of the household had an exempt jurisdiction within the Verge, and the Coronor of the County could not medle, as appeares by *Articuli super Chartas*; and *Swifts case* adjudged where a Coronor of the County took an inquisition within the Verge, 'twas avoyded by plea, the one cannot meddle within the power of the other. But Justices of the Kings Bench, of oyer and terminer, &c. may inquire, heare, and determine all murders, &c. within the Verge, for their authority is generall, through all the County: so resolved in *Holerosts case*.

Resolved, that the indictment was sufficient, for it doth not appeare that D. (where the stroke and death was) was within the Verge, and though in truth, it were within, yet, it ought to be found by the oath of the indictors, and cannot be supplied by nude averrement, and it shall not be void *& coram non iudice*, as to the Coronor of the household, and good before the Coronor of the Country, for the Record is intire, and taken intirely before them, &c. And the defendant in his plea hath averred, that D. was within the Verge, so the Coronor of the Country could not take the indictment onely.

Resolved, for that the indictment (upon which he was convicted) was insufficient, that he may be newly indicted, &c. for his life never was in jeopardy. Resolved, that where the stroke was one day, the death another, the conclusion ought to be, that he was murdered the day of his death, otherwise 'tis nought, for 'twas not murder before: and 'twas resolved, that the finding of the stroke, and the death, were not sufficient of it selfe, without conclusion; and so T.W. murdered the said R. W. Resolved, that though the conviction were pending the appeale, yet, it had been lawfull, and before that the defendant was compelled to plead, it had been a good barre.

Waits Case 45. of the Queen. fo. 47.

Resolved, that where a woman brought seven severall appeales against severall persons, as principals, all ought to abate, but the first, for all the principals and the accessories before the murder and after, and before the Writ purchased, against whom the plaintiffe will bring an appeale, ought to be named in the Writ: for all make default, except one, yet,

the

the plaintiffe ought to count against all, therefore he ought to bring the appeale against all. And the defendant shall not have damages by the Statute of W. 2. for it is out of it, because the Writ abated. And the Statute of *Magna Charta* sayes (*appellum*) in the singular number.

Hill. 30. of the Queene, fo. 48.

AN indictment upon 8. H. 6. was quashed, *Quia fuit inquisitio capta ad sessionem pacis in Com'. S. ten'. die Martis, & die Mercurij*; though the sessions may endure two or three dayes, yet, the record ought to mention, that they were holden at a day certaine; as also for that the Statute was misrecited in a point materiall. Note, because mis-recitall is fatal, the sure way is, to draw the indictment with conclusion *contra formam statuti*, and with no recitall of the act.

Ognels Case. 29. of the Queene. fo. 48.

AN Executor possessed of a grange, consisting of divers parcels, demises all the grange (except H.) to A. for 23. yeares, and H. to F. for 23. yeares, and grants all the residue of his terme in the intire grange to A. & F. B. the reversion or grants a rent charge in fee, out of all his lands, &c. called. C. grange *quondam in tenura B.* (the testator) and now *in tenura & occupatione de A.* The rent is arreare, the intire terme expires, the reversionor makes a Feoffment, the grantee dyes, the Feoffee leases at will, the Executors distraine for arrearages.

Resolved, that at common Law, in some case debts for arrearages of an annuity in fee, though it continues; as if a Parson, or Prebend resigne, or dyes, because the Parson is chargeable; otherwise of a rent
fer-

service, charge, or seek, when the Freehold continues; and, for a rent there is a diversity, when a rent in fee is extinct by the act of the party, and when of the Law, and when particular estates expire: see the booke at large. But 'twas resolved in the case at barre, that the arrerages due in the life of the grantee, were lost at common Law. Resolved, that *H.* was not charged with the rent, for though it be parcell of the grange, and *A.* and *F.* have the reversion of the terme, and so it may be said in their tenure, yet, for that *A.* then had not *H.* in his occupation, 'tis not charged.

Resolved, that the lessee at will is chargeable by 22. *H.8. ca. 37.* for where things are due in right, and become remediless by the act of God, the Parliament which gives remedy for this, shall be favourably construed, and extend to advance the remedy proportionably to the defect of the Law, according to the mind of the makers, and therefore the Feoffee of the Feoffee *in infinitum* shall be charged, for otherwise the Statute shall be in vaine, &c.

Resolved, if the grantee in fee, or for life of a rent service, or charge, (after 'tis arreare) grants over, the tenant attournes, the grantor dyes, his Executors are not within the Statute, for by the grant the arrerages are lost, and were not due to the testator *tempore mortis*, as the Statute speakes; and after the grant the testator could not distraine for the arrerages; and the act gives remedy onely, where the arrerages are due, and become remediless by the act of God.

Sharpe and Pooles case, 17. of the Queene; a rent was granted to a woman for life, 'tis arreare, she takes husband, 'tis arreare, the wife dyes, the husband brings debt against the heire being tenant, for all arrerages: Resolved, that for the arrerages before the marriage he had no remedy at common Law, but for the other he had debt.

object.

Objected, that the husband shall not have the arrearages due before by this Statute ; 1. Because at common Law the Executors of the wife may have an action for them, and the Statute gives remedy, when Executors cannot have an action, and doth not intend to toll the remedy from the common Law. 2. The branch says (*due in the wives life*) so the arrearages ought to incur, when she is his wife. Resolved to the contrary, for the Statute says (*due and unpaid in the wives life*) and the common Law gives remedy for the arrearages of an estate for life incurred in the life of the wife, and therefore the Statute did not intend to extend to these arrearages, but to the arrearages due before, for, *Verba accipienda sunt cum effectu*.

Resolved, that a Feme covert cannot make an Executor without assent of her husband, and the administration of her goods of right belong to the husband. And the Statute in naming the woman (*wife*) intends onely to describe and designe the condition of the woman, not to imply that the arrearages ought to incur during coverture.

Rawlins Case. 29. & 30. of the Queene. fo. 52.

A. Possessed of a house for thirty yeares (except a Stable of which B. was possessed for two yeares) granted all his interest to C. and demised the Stable to B. for six yeares by Indenture after the end of the two yeares ; C. redemises all to A. for twenty one yeares, rendring twenty pounds *per annum*, and to pay a Fine of twenty five pounds, upon condition for to reenter for non payment of the rent, or Fine ; before the day of payment, A. redemises the Stable to C. for ten yeares, the rent was behinde, the Fine was not paid, C. enters not into the Stable, nor B. attournes.

Resolved, that where the verdict was entered three termes past, and in the Roll the demise to B. for six yeares was not entered to be by Indenture, that the Roll shall be mended, because the note of the speciall verdict, which the Jury exhibited to the Court, remaining with the Secondary, purports that the Jury found the demise *prout*; by which it doth appeare to the Court, that the demise was shewne in evidence, and reference made by the note to it; and so *'twas* in *Gomerfalls case*.

Resolved, though the condition is of two parts in the dis-junctive, for non-payment of rent, or of the summe in grosse, yet, if A. had redemised any part of the house to C. and C. enters, by which the rent is suspended, that all the condition as well for the collaterall summe, as for the rent is also suspended, because the condition is iature, and cannot be divided by the act of the parties. Resolved, that if A. had redemised any part to C. though C. never enters, the rent is suspended, and though a stranger occupy it.

Resolved, that the lease by A. to B. for six yeares, though he had nothing at the time, was good by conclusion by the Indenture, and when C. redemised all to A. then was the interest bound with this conclusion, then when A. redemises to C. the Stable, C. is also concluded, for all parties and privies in estate or interest are bound by the Estoppell; then the case is no other, but that A. demises for six yeares the Stable to B. and after demises to C. for twenty yeares (which is a good Lease in reversion for fourteene yeares) this is no suspension of the rent, or condition, for 'tis no grant of the reversion, but a future interest in reversion, no terme, but an interest of a terme, as the pleading is, and notwithstanding such grant, the reversion is in the grantor, without attornment, and he shall have the rent upon the first lease,

lease, but if there be an attournement, the reversion passes, and suspension will follow. And therefore 'twas agreed, if a man leases for twenty one yeares rendring rent, and a reentry, the lessee leases to the lessor for six yeares, to commence two yeares after, the rent is arreare, and by this he shall defeate the future interest vested in him.

Resolved, that this Estoppell being found by verdict, the Court ought to judge upon all the speciall matter, according to Law, and because they are sworne *ad veritatem dicendam*, they did well to finde the truth of the case, and leave it to the Court; by Wray chiefe Justice in *Pledalls case* the Jury was attainted, for not finding such a lease by conclusion, intending that they (being sworne *ad veritatem dicend'*.) were not bound to finde it; for the Court held that the interest of the land as to parties and privies was bound, and no conclusion shall be by such Indenture, after the terme ended, by Wray.

Resolved, if lessee for twenty yeares, leases for two yeares rendring rent, and grants all his terme and interest, if the lessee attournes, the reversion passes, and if no attournement be, yet the interest in reversion passes, for the grant of a man shall not be adjudged voyd, if, to any intent, it may take effect.

Resolved, if lessee for twenty yeares of a house, leases part for two yeares, and after leases to another all for ten yeares, rendring rent, so that it intures as a Lease in reversion for part, that the rent shall issue out of all, and of the interest of the terme, though it be not any estate that may be surrendered, and though it be conjoynd with land in possession.

Error was brought upon this judgement, and this error assigned; for that R. the plainriffe was an Infant, and was admitted by his Gardian, and no Record made of it, as 'tis used *in Banco*, but onely recited

ted in the Count, *J. R. per A. B. gardianum suum (ad hoc per curiam specialiter admissum) queritur.* Which was disallowed by all the Justices, upon search and view of many presidents, which make a Law in this Court, yet some presidents were as in *Banco.*

Note (Reader) according to the opinion of *Wray* 'twas resolved in *Londons case*, that if a man takes a lease by Indenture, of his own land, this is an Estoppel but during the terme, and then both parts of the Indenture belong to the lessor.

Wardens and Commonalty of Sadlers case. 30. of the Queene. fo. 54.

BY *Mandamus* 'twas found before B. Mayor of London, Escheator of the Citie, and the Inquisition was returned in Chancery, that T. C. held of the King, &c. and dyed seised without heire, the Wardens, &c. shewed their right that R. M. was seised in fee, and devised to them in fee, and that they were seised till by C. disseised, and shew the custome of London, that a Citizen and Freeman may devise in Mortmaine, and averred that R. M. was, &c. *Tempore mortis*; and upon this, great question was, whither a *Monstrans de droit* lyes, or ought to be by Petition. See the Case at large for this Learning, *Bereblock* and *Redes* Case was cited to be adjudg'd, if A. be bound in a Recognizance, Statute, &c. and after a recovery in Debt is had against him, and he dyes, his Executors ought first to pay the Debt upon the Recovery, though it be puny to the Statute, &c. for though both be Records, yet the judgement in the Court upon judicall and ordinary proceeding is more notorious and conspicuous, and of more high and eminent degree then a Statute, &c. taken in private, by the consent of Parties.

*Forſe and Hemblings Caſe, 37. Eliz. in com. Banc.
fo. 60.*

Alice Allen ſeiſed of certaine Meſſuages in Fee maketh her will in Writing, and thereby demiſeth that if *James Amynd* doth ſurvive her, that then ſhe doth demiſe and bequeatheth the ſame meſſuage to him and his Heires. And afterwards the ſaid *Alice* did Intermarry with the ſaid *James*, and during her coverture, ſhe ſaid often the ſaid *James* ſhould never have the ſaid Meſſuage by her ſaid Will; *Alice* dyed without iſſue, and *James* ſurvived, and the Queſtion was, whither the Will was countermanded by the ſaid Marriage, or not, and if not, whither by the words of revocation after the Marriage, was a Countermand, and it was adjudged upon great deliberation, that the taking of a Husband, and the coverture at the time of her death, was a countermand of the Will. For the making of a Will is but an inception thereof, and it doth not take any effect untill the death of the Deviſor. For, *Omne teſtamentum morte conſummatum, & voluntas eſt ambulatoria uſque extremum vitæ exitum.* And it ſhould be againſt the nature of a Will, to be ſo abſolute, that he that made the ſame, being of ſane memory, may not countermand the ſame. And therefore the taking of her Husband, being her owne proper act, doth amount to a countermand in Law: Alſo 'twas ſaid, that after Marriage all the Will of the Wiſe in judgement of Law, is ſubject to the will of her Husband, and a Feme Covert hath no Will, and therefore the Countermand after Marriage was of no force, *Quod fuit conſeſſum per tot. Cur.*

Harlakendens Case, 31. El. in banco regis. fo. 62.

THe Earle of Oxford leased to A. B. and C, (except the Trees) for 21. yeares, C. assigned to D. the Earle sells the Trees to A. B. and D. they leased to E. and after sell the Trees, the Vendee cuts them, the Lessee brings Trespasse. When a man maketh a Lease for life or yeares, the Lessee hath but onely a speciall interest or property in the Trees being Timber, as things annexed to the Land, but if the Lessee or another severs them, the property and interest of the Lessee is determined and the Lessor may take them, as things which were parcell of his Inheritance.

*Bowles. says
the Lessee hath
power
to commit
Waste to his
tenant &c.*

It was also resolved that this clause (wichout impeachment of wast) doth not give to the Tenant for life, any greater interest in the Tree, then he had by the demise of the Land, but onely that it will serve, that he shall not be impeached in any action of Wast, or to recover damages or the place wasted.

* It was also resolved that if an House fall by tempest or other act of God, the Lessee for life or yeares hath a speciall interest to take Timber to reedifie the same, if he will. But if the Lessee suffer the House to fall, or take it downe, the Lessor may take his Timber as parcell of his Inheritance, and the interest of the Lessee is determined, and he may have wast, and treble damages.

Resolved, that the Lessee by the grant had an absolute property in the Trees, so that by the Lease of the Land, they did not passe, and he hath not equall ownership in both, and it should be a prejudice to him

** This is adjudged otherwise by all the Judges of England, in Lewes Bowles Case, in the 11. Report.*

him if they should be joyned to the Land, for then he could not cut, during the terme, without wast, and after he shall not have them, and the Lessor shall not have them against his own act. And here A. B. and D. were Tenants in common of the Land, and joyntenants of the Trees, and so their interest of severall qualities, and therefore cannot be a union betwixt them, but upon a feoffement, if the Feoffor accept the Trees, they are in property divided, though, *In facto*, they remaine annexed to the Land, for it is not felony to cut them, &c. and if the Feoffor grants them to the Feoffee, they are reunited in property, as well as *De facto*, and the Heire shall have them, not the Executors, for the feoffee hath an absolute ownership in both, and it is more benefit to him that they are reunited.

It was resolved, That if Tymber Trees be blowne downe with the winde, the Lessor shall have them, for they are parcell of his inheritance, and not the Tenants for life, or yeares, but if they be Dotards without any Tymber in them, the Tenant shall have them.

It was adjudged, that wast may be committed in glasse in the Windowes, for it is parcell of the house, and discends as parcell of the inheritance to the Heire, and the Executors shall not have them, although the Lessee put the glasse in the Windowes at his own cost, and if he take them away, he shall be punished in wast. And 42. *Eliz. in Com. Banco.* It was resolved that Wainscote, whither it be annexed to the house by the Lessor, or the Lessee, is parcell of the House, and there is no difference in Law, whither it be fixed with great Nails or little Nails, or Screws or Irons put through the Walls, for if it be fixed by any wayes or meanes to the House or Posts, or Walls thereof, the Lessee may not remove it, but

he is punishable in an action of wast. For it is parcell of the house, and by Lease or grant of the house in the same Mannor (as Sealing or Plaistering) it shall passe as parcell thereof.

Fulwoods Case, 35. of the Queene. fo. 64.

C. Acknowledged a recognizance of 250.li to the Chamberlaine of London, and his Successors, after acknowledges a Statute of 200.li. before the Recorder of London, and Major of the Staple to A. after A. sues Execution by *Liberate*, but it doth not appeare that it was ever returned, after the Successors of the Chamberlaine, sue Execution, by precept to the Serjeant of the Mase in nature of an *Elegit*, and hath a moyry, C. dyes, his Wife recovers Dower, and had this house assigned for her third part, she dyes, the Chamberlaine assigns to *Fulwood*, after A. assigns also to F. after the Heire of C. demises to B. &c.

Resolved, that the Successors of the Chamberlaine shall have this recognizance, though a body sole; for that the Corporation was by custome to diverse purposes, for Orphanage, for the recognizance was acknowledged for Orphanage mouey, and the same custome inables the Successors to take such an Obligation, &c. otherwise of a Bishop, Parson, &c. and that the Execution by the Serjeant of the Mase, was good, notwithstanding the Statute of W. 2. ca. 18. which saith, *Vic. liberet ei medietatem*, &c. By reasonable extent; to wit, by inquisition of honest men, and the Sheriffe is sworne, and the Serjeant is not sworne to take the Jury, &c. For the Statute extends to every other immediate officer, to any Court of the King of record, &c. Resolved, that execution of the *Elegit* was good enough, without suing a

Scire

Scire facias against A. being in by matter of Record ; but 'twas said, if the Sheriffe had returned the former execution, he ought to have a *Scire facias* ; by the Court, if the Sheriffe makes execution, 'tis good.

Resolved, that the Verdict was good, which finds, that C. acknowledged a recognizance before the Major, though not said *secundum formam Statuti*, nor, *per scriptum suum obligatorium*, for being the trover of lay People, it shall be intended according to the Statute. Resolved, that the Conusee cannot have aide of the Statute of 32. H. 8. ca. 5. for which, see the Booke at large.

Resolved, that if a man be bound in two Statutes, and the latter Statute be first extended, and delivered in execution for a longer time, and a greater sum then the first was, yet when the first Statute is satisfied, and his interest lawfully determined, the second Conusee shall have the Land againe, by force of the first extent. It was resolved *Per. tot. Cur.* that the execution of a *Liberate* is good, although the Writ be not returned, and so of a *Capias ad satisfaciendum*, and an *Habere fac. seisinam*, and other Writs of Execution. And that the Conusee shall hold the Land, not onely untill he be satisfied for damages for detaining of the Debt, and costs of Suite, but also for his reasonable Labours and expences, looke the words of the Execution ; and being in by matter of record, the Conusor must bring his *Scir. fac.* but in Case of an *Elegit*, the Conusor after satisfaction may enter, for there is no costs and damages, but the meere Debt.

Hyndes Case, in com. Banco. 33. Eliz. fo. 70.

William Hare seised of certaine Lands by deed, indented demised the same to Robert Gerard

yard for 16. yeares, who assigned over to *Elizabeth Hynd*. *William Hawe* afterwards by bargain and sale in consideration of money due, sold the reversion to one *Libb*, and before the same was inrolled, the said *William Hawe*, levied a fine to *Libb*, and his Heires, &c. and after the levying of the fine the said Indenture of bargain and sale was inrolled within six Moneths, according to the forme of the Statute, and *Elizabeth Hynd* the Tenant, did not attorne. The question was, Whither the Conusee of the fine after the said Indenture inrolled, shall be in by the fine, and by the bargain and sale? for if he shall be adjudged to be in by the fine, no action of waste lyeth, for default of attornment, and if he shall be in by the Indenture inrolled, then there needeth no attornment, And it was resolved, *Per tot. Cur.* that when *Hawe* by deed indented, did bargain and sell the reversion to *Libb*, and his Heires, and before the inrollment levied a fine to *Libb*, and his Heires, and after the Deed is inrolled, (within six moneths) that the Conusee shall be in by the Fine, and not by the Deed inrolled, for the Fee simple passeth by the fine to the Conusee and his heires, and after the inrollment of the Deed may not divest and turne the estate out of himselfe, which was absolutely established in him by the fine, for when the common Law and the Statute Law concurre, the common Law shall be preferred. And it is true, that the inrollment shall have relation to the delivery of the Deed. But that is onely to avoyd estates, or charges made of the same thing by the bargainor, to strangers after the delivery of the Deed, and before the inrollment, but not to divest any estate lawfully settled in the interim, in the bargainee.

The Records are so high and sacred that they import in themselves inviolable verity, which if any man

man dare to gainsay, the Law doth attribute so great honor, to them, that they shall be tryed only by themselves, and not by the Countrey, and if averrement against a Record should be permitted, then the effect and validity of the Record should be tryed by the Countrey, which is against the rule of the Law; *Nulum iniquum est in jure presumendum*. Yet, resolved in this Case, that the Lessee shall be admitted to averre that the Deed was inrolled, after the Fine, and not before, because it stands with the Record, and doth not impugne any thing within the Record, and great inconvenience would follow, if such averrement should not be admitted.

Boroughs Case, 38. Eliz. In Banco Regis. fo. 92.

RESolved, that the rent reserved upon a demise ought to be demanded, if the Lessee will take advantage of a condition for non payment of the same, and the demand to be made at the place limited for the payment of the rent, although there be no words of demand in the demise, and although it be out of the Land demised, but in the Kings Case it is otherwise. *Prerogativa Regis*, for there the rent upon a reentry reserved ought to be tendered; and in such Case, the Pattentee of the King, shall demand the rent upon the Land.

Resolved, if the Queene leases rendering rent, without limittng any place, or to whose hands, the Lessee may pay it at the Exchequer, or to the Bayliffes or Receivers of the Queene, and when shee so appoints it by expresse words, 'tis no more then the Law appointed, and though the words be (*Ad receptum scacc. apud Westm.*) it needs not that the receipt be holden at *Westminster*, the Law would have implied that. And when a common person appoints

points no place, the Law appoints the payment upon the Land.

Palmers Case, 39. Eliz. in Banco regis. fo. 74.

THe Sheriff by vertue of a *Fier. Faci.* may sell a Lease of the Defendant, and in his Writing the true commencement and terme of the Lease must be expressed, or else, if he selleth all the interest that the defendant hath in the Lands, he needeth not to make any mention in the returne, but generally *Quod fieri fecit de bonis & catallis, &c.* But an inquisition found that the Debtor of the King was possessed. *Pro termino quorundam annorum, &c.* 'twas void, for a terme cannot be extended without shewing the certainty of the commencement, for after the Debt satisfied, he is to have the remainder.

Resolved, for that the case at Barre was an execution by *Elegit*, which ought to be made by inquisition; the sale here was voyd, for the terme was mistaken in the inquisition, and so mistaken was apprised by the inquisition, and the Sheriffe cannot sell any terme, but that onely which was apprised by the Jurors.

Hollands Case, 39. of the Queene. fo. 75.

RESolved, that before 21. H. 8. ca. 13. if he which had a benefice with cure, accept another with cure, the first is voyd, but this was no avoydance by the common Law, but by constitution of the Pope, of which the Patron might take notice if he would, and present, without deprivation, but because the avoydance accrued by the Ecclesiasticall Law, no Lapse incurred without notice, as upon a deprivation, or resignation; so, that the Church was voyd

voyd for the benefit of the Patron, not for his disadvantage; But now, if the first benefice be of the value of 8. *l. per annum*, the Patron at his perill ought to present, for to an avoydance by Parliament, every one is party, but if not of 8. *l.* 'tis voyd by the Ecclesiasticall Law, of which he needs not take notice. Resolved, that 21. *H. 8.* is such a generall Act, of which the Judges *Ex officio* (though it be not pleaded) ought to take notice. See the Booke at large upon this Learning, what act shall be said a generall act? Of which the Judges are bound to take notice, what not?

*The Case of Corporations, 40. and 41. of the Queene.
fo. 77.*

RESolved, that where diverse Cities, &c. are incorporated by the name of Mayor and communalty, Mayor and Burgeses, &c. and in the Charters 'tis prescribed that the Mayors, Bayliffs, &c. should be chosen by communalty and Burgeses, &c. which is as much as to say, as by all the Burgeses, or all the communalty; that yet the ancient and usuall Election, by a certaine selected number of the principall, of the communalty, &c. (Commonly call'd the Common Councell) and not by all of the communalty, or so many of them as will come to the Election, was good in Law, and warranted by their Charter; for, in every Charter they have power given to them, to make Lawes, Ordinances, and constitutions, for the better government and ordering of their Cities and Boroughes: by force of which, and to avoyd popular confusion, they, by their common assent have instituted, &c. that the election shall be by such a select number. And though this Ordinance cannot be now shewne, yet, it shall
be

be presumed that such ordinance and constitution was made at first.

Digbyes Case, 41. Eliz. fo. 78.

IT was adjudged, that when a man hath a benefice with cure, above 8. l. and afterwards taketh another with cure, and is presented and instituted, and before induction procure the Letters of dispensation, that this dispensation cometh too late, for by the institution, *Ecclesia plena & consultata existit*, against all persons but the King, for every rectory consisteth upon spirитуallty and temporallty. And as to the spirитуallty, *Viz. Cura animarum*, he is compleat Parson by the institution, for when the Bishop upon examination had, admitteth him able; then he doth institute him, and saith, *Instituto te ad tale beneficium & habere curam animarum*, of such a Parish, & *accipe curam tuam, &c. Vide 33. H. 6. 13.* But touching the temporallties, as the Glebe Lands, &c. he hath no freehold in them, untill induction, for by the generall Councell of Lateran. Anno Dom. 1215. it appeareth that by the acceptance of two benefices the first is voyd: *Aperto jure*, for upon this Councell are our Bookes in this case founded. And 'twas resolved, that this was an acceptance of a benefice. *Cum cura*, within the Statute of 21. H. 8. Institution is an acceptance by our Law; and 'twas lately adjudged that if before induction, the Clerke be inducted to another, the first is voyd by 21. H. 8. which saith, (*Accept and take another*) and for that now the avoydance is declared by 21. H. 8. he is bound to take notice, but till after induction, &c.

Nokes Case. 41. Eliz. fo. 80.

A Man maketh a Lease by these words (*Viz.*) Demise, &c. Grant, &c. and Covenants that the Lessee shall enjoy without eviction, by the Lessor, or any claiming under him, and was bound to performe all Covenants, &c. the Lessee assigns his terme, a stranger enters upon the Assignee, and recovers in an *Ej. firme*, after ouster, the first Lessee brings Debt. This is a covenant in Law, and the assignee shall have a writ of covenant, 9. *Eliz.* 257. *Dyer.* And if a man be bound by obligation to performe all covenants, grants, &c. This doth extend as well to covenants in Law, as to Covenants in Fact.

Resolved, though the recovery were by verdict, yet he ought to shew that the Plaintiffe in this recovery had an elder Title, for otherwise the Covenant in Law is not broken. It was holden that an expresse Covenant doth qualifie the generalitie of the Covenant in Law, and restraineth that by the mutuall consent of both parties, but a warranty in Law, and an expresse warranty, the party may choose whither he will have, for this word *Dedi* importeth a warranty.

*Sir Andrew Corbets Case, 41. and 42. of the Queene.
fo. 81.*

A. Devises Land to B. &c. to have, &c. till 800. *l.* shall be paid by them of the profits to marry his Daughters, and dyes, the Heire conceales the Will, takes all the profits, and dyes, the Will is found by office, the Devisee enters, and hath levied 640. *l.* and employs it accordingly; whither the profits taketh

ken by the Heire shall be parcell of the 800. l. was the Question.

Resolved, that the words (shall be leavyed) shall be construed (shall or might be leavyed) and so 'twas holden of a Lease or limitation of a use, otherwise, he which is to leavy the Summe, by deferring to doe it, may exclude the reversioner for ever: see the Booke at large. Resolved, when the heire or reversioner, &c. enters, and expulses him, to whom the Land is limited, he hath election to recover the Mesne profits, in an action, or reentry, and retainer, till he leavyes the intire Summe, and the other shall not have advantage of his own wrong, and if a stranger had entered, and occupied, the Devisee ought to have taken notice at his perill, for *Vigilantibus & non, &c.* and none is bound to give notice, but here the Heire himselfe concealed the Will, and the Devisee had no remedy, for the Mesne profits after the death of the heire. Resolved, that a Gardian shall not ouste Tenant for life, nor yeares of the Tenement.

Resolved, that admitting the Gardian shall ouste Tenant for yeares, yet he shall not hold over, because his terme is certaine in the commencement, continuance, and end; otherwise of Tenant by *Elegit*, Statute, &c. they shall hold over, because the terme is uncertaine.

Southcots Case, 43. Eliz. in banco regis. fo. 83.

IF A. doe deliver goods to B. for to keepe, the goods be purloyned away, yet B. shall be charged in a Writ of detinue. For, to keepe, and to keepe safely is all one, but if B doe take them to keepe as his own goods, he shall not be charged with them. And if A. doe pledge or Guage goods unto B. in
this

this Case B. shall not answer for them, if they be purloyned, for he had some property in them, and not a custody onely, but a ferryman a common Inkeeper, or a Carrier, which taketh hire, they ought to keepe the goods safely, and they shall not be discharged, if they be stolne or purloyned. But a Factor or a Servant (although they have wages) doing his*indeavour, shall not be charged.

Luttrels Case, 43. Eliz. banco regis, fo. 86.

IF a man have estovers, either by grant or prescription to his house, although he alter the Roomes, and Chambers in his house, it seemeth that the alteration of the qualities, so as it be not of the house it selfe, and without making new Chimneys, by which no prejudice accrewes to the owners of the Woode, is not any destruction of the prescription, and though he make new Chimneys, or make a new addition to his old house, he shall not loose the prescription thereby, but he may imploy or spend any of his new estovers in the Chimneys, or in that part newly added. It was also resolved, that if a House or Milne do fall, or be taken downe by the act of the owner, or by wrong of another, yet for that the perdurable part which includes all, doth remaine, which is the Land, whereupon the Fabrick is built, he may reedifie the same againe without any losse of his appendant or appurtenant, but it ought to be upon the same place which was the foundation of the old house, for as it did support, and in judgement of Law included the ancient house when it was standing, so it imports and includes the new house, so as it is in a manner a continuance of the ancient house.

Divers Tenants do hold of another, as of his
M Man

Mannor by fealty and suite to the Lords Milne, the Lord doth alien his Milne with the suite of his Tenants, and after, the vendor dyeth, and his Sonne entereth and buildeth a new Milne upon the other Parts of his demeane, he shall have the suite to his owne Milne, which the Vendee had before, for the suite belongeth to him that hath the Mannor, for no man may have suite to his milne; by reason of a Tenure, If it be not of Corne growing upon the Lands, within the Seigniorie or Mannor, and the Lord may erect a new Milne within any part of the Mannor, and the Tenure is due to the same, and not to any particular Milne.

Druries Case, 43. Eliz. Error in Banco Regis. fo. 89.

A Countesse being a Widdow retaineth three Chaplains, he who is last retained, is not capable of a dispensation, for the Statute of 21. H. 8. c. 13. is executed by reteining of two, and the reteining of the third, shall not develt the capacity, which was in the first two, but if the reteiner had beene at one time, he who is first promoted, shall be first preferred, because in *Aequali Jure*, &c. 2. Resolved, if the two first die, the third is not capable of a dispensation without a new reteiner, because he was reteined at the common Law, and not according to the Statute, *Quod ab initio non valet, &c.* As if the Sonne and Heire of a Baron reteineth a Chaplaine and giveth him Letters under his Scale, and after the Father dyeth. And it was said, that the said act shall be taken strictly; as if a Baron be made Gardian of the five parts, he shall reteine no more Chaplains then before, and if a Baron reteine two Chaplaines who are promoted, he cannot discharge them, and reteine others, during their lives.

Slades Case, 44. Eliz. fo. 92.

IT was resolved that every contract executory imports in it selfe an assumpsit. For when one doth agree to pay money, or to deliver any thing, by that he doth assume, and promise to pay or to deliver the things, and therefore when he selleth any goods to another, and agreeth to deliver them at a day to come, and the other in consideration thereof agreeth to pay so much money, at such a day; in this case both parties may have an Action of Debt, or Action upon the case, upon the assumpsit, for the mutuall executory agreement of both parties, import in themselves as well a reciprocall Action upon the Case, as an Action of debt and a recovery or barre in an Action of debt, is a good Bar in an Action upon the Case, brought upon the same contract, and so likewise in an Action upon the case, a recovery, or Barre in the same, is a good plea in an action of Debt, upon the same contract.

The Defendant in an action of the case upon the assumpsit may not wage his Law, as he may doe in an action of debt.

If a Summe of money be promised in Marriage to be paid at severall dayes, an action upon the assumpsit lyeth for non payment of the first, although no Action of Debt lyeth, untill all the dayes be past, *Multitudo errantium non parit errori patrocinium*, and if the Debtor of the King sueth by *Quo minus*, in the Exchequer, the Defendant shall not have his Law for the benefit of the King.

*Adams and Lamberts Case. 44. and 45. Eliz. in banco
Regis, in Ejectione firma. fo. 104.*

UPon consideration of the Statute of 1. E. 6. cap. 14. it was resolved.

1. That if one demise to any of his kindred, to superstitious uses, although he limit them to pay certaine Sums of money to the said uses, yet these Lands are given to the King, for it shall not be intended to be upon other consideration, but that which they at that time conceived to be the service of God, which is the most worthy consideration, and the reason wherefore the demise was made to his friends was, because he imposed more trust in them then others, therefore the persons shall not be regarded.

2. A demise of an estate for life, or in raile is within the Statute by equity, although that the Statute saith, *To have continuance for ever*, for the intent of the Statute was to tolle such uses, and regardeth not the time of their continuance.

2. An estate taile may continue for ever, and so was the intent of the deviser in this case, that the uses should continue for ever, for he limits his heire to doe it. 3. Without this construction the Statute should be defrauded.

3. The Statute giveth to the King, Lands given for the finding of a Priest, and giving of Lands upon condition to find a Priest is within the Statute, for this is more compulsoy then the other.

4. All the Land is given to the King, but not by the first Branch, for that extends onely to lawfull Chanteries, or those who have countenance of lawfull commencement, but not to such who are without any colour of lawfull commencement: as if they
were

Lib.4. *Adams & Lamberts Case.* 165

were founded by license of the Pope, this Chantry is without colour of lawfull commencement or foundation: also if Lands be given to the finding of a chantery without Corporation, this is out of the said Branch. Neither by the second Branch, for that giveth the Lands belonging to such Colledges to the King, without which, he shall onely have the Scites; but by the third Branch; for this extends to finding of a Priest without Corporation. But 'twas objected, that the Land was not given to the finding of a Priest, for he had but a pension out of it, and the Statute is, that the King shall have in as large; &c. as the Priest had it. 2. Here is a good use limited, six pence by the Weeke to six poore men, and although it be *Adorandum*, &c. this is not within, for it is out of the Statute, except that Orisons be to be performed in publique. For answer to these: these differences were taken. 1. If one give 20. *li.* *per annum*, for the finding of a Priest, and limit to the Priest 10. *li.* *per annum* all is given to the King, for the residue shall be intended for the finding of necessaries: otherwise it is, if a condition be annexed to the gift, to give 10. *li.* *per annum* to a Priest, there the King shall have but 10. *li.*

2. Land of 20. *l.* *per annum* is given to find a Priest with 10. *l.* thereof, and that the other tenne pound shall be to the Poore, the King shall have but tenne pound, but if it be for finding of a Priest, and maintenance of Poore men, without limiting how much the Priest shall have, the King shall have the Land for otherwise he shall have nothing. 3. If Land of 20. *li.* is given for finding Sallary for a Priest with 10. *l.* of it, and also a good use is limited, there the King shall have but ten pound, although the other necessaries are to be found for the Priest, because a good use in certaine shall be preferred before a superstitious

ous incertaine use ; but if nothing in certaine be limited to the Priest , the King shall have the Land. 4. If Land be given to finde a Priest the King shall have it, but if a Priest have but a stipend , the King shall have but the stipend. 5. When a certaine summe is limited to a Priest, and other good uses are also limited, which depend upon the superstitious use, all is given to the King. 6. If all the uses be superstitious, of what certainty soever they are, the Land is given to the King, otherwise it is, if there be any good use, and as to that which was objected, that the King shall have no more then the Priest. It was answered, that that extends to the 1. 2. and 4. Branches , and not to the third, for otherwise the King should never have the land it selfe, for this was never used to be limited to the Priest himself.

And although that these Orisons are to be made out of any Church, yet it is within the Statute , for the words Church or Chappell , extend to Lamps and Lights, and not to Prayers. 2. The Statute speakes of an anniversary, &c. or other like thing , and this is a like thing, but in the case at Barre, if he had said that his Friends should have the residue of the profits of the Land, this had saved the Land.

*Actions Case, 45. Eliz. com banco in a
Quare impedit. fol. 117.*

A Noble Woman retaineth a Chaplaine who purchaseth a dispensation , she taketh a Husband , the Chaplaine is promoted to another benefice then that which he had before the retainer, his first benefice is not voyd.

It was Objected that the Statute speakes of duches, &c. being Widdowes or Married under the degree of a Ba. on, and for that , when she Marrieth above

bove the degree she is out of the Statute, and 'tis not sufficient that she is within the Statute, at the time of the reteiner, but she ought to be so also at the time of the promotion.

It was answered, that all which the Statute requires at the time of the reteiner, is, that she be a Noble Woman, Married under the degree of a Baron, or a Widdow, and to be Noble at the time of the promotion; therefore a Noble Woman Married above that degree, cannot reteine, or if at the time of the promotion she be not noble, as if her Earle be attainted, and although the Baron and Feme have but one body, yet they have two souls, wherefore it is not inconvenient that they should have severall Chaplaines, and the reason for which the said provision was made for a Noble Woman who marieth an ignoble Husband was not to exclude those who married Nobles, but because such Femmes are in Law ignoble (except they be Noble by descent) and without such provision shall be out of the Statute: Baron reteineth a Chaplaine and dyeth, the Chaplaine may retaine both the benefices, but he shall be punished for non residency, without suing a non-obstante.

Dumpors Case, 45. Eliz. Banco regis in Trespass, fo. 119.

A Man maketh a Lease, provided that the Lessee or his assignes shall not alien the premises without speciall license of the Lessor, &c. The Lessor giveth license to the Lessee to alien the same, or any part thereof, &c. In this case the lessee may alien and his assignes, *Ad infinitum* without any more license, and the proviso is determined.

The Lord *Stafford* made a Lease to three persons, upon condition that they, nor any of them should alien, without the consent of the Lessor, and after one of them did alien with his consent, and after the other two did alien without license, and it was adjudged 28. *Elix.* that in this case, the condition being determined, as to one person, by the license of the Lessor, it was determined in all, for when the Lessee alieneth any part of the residue, the Lessor may not enter into any part aliened with license, and therefore the condition being determined in part, is determined in all, for the condition being entire, may not be apportioned, and 16. *Elix. Dyer.* 334. *fuist deny per Pophm Chiefe Justice. Vide lit. 80. b. & 4. & 5. Ph. and M. Dyer.* 152.

Bustards Case, 1 Jac fol. 121.

IN every lawfull exchange of Land, this word *Ex-cambium* imports in it selfe *Tacite*, a condition and a warranty, and the other a Voucher and recompence, and all in respect of reciprocall consideration, the one land being given in exchange for the other, but that is a speciall warranty, for upon the voucher he shall not recover other Lands in value, but those onely which were given in Exchange, and this warranty followes onely in privity, for none may vouch by force thereof. but the parties to the Exchange, and their heires, and no assignes.

If A. give in Exchange three acres of Land to B. for other three acres, and after one Acre is evicted from B. in this case all the exchange is defeated, and B. may enter into all his lands.

*Beverleys Case, de non compos mentis in banco regis,
1. Jac. fol. 123.*

EVery act that a man *De non compos mentis* doth either concerne his Lands, Life, or Goods, either done in Court of Record; or out of Court of Record. all Acts that he doth in any Court of Record either concerning his Lands or goods shall bind himselfe and all others for ever, and those acts which he doth out of Court of Record, shall binde himselfe during life, and in some Cases shall binde all others for ever, so as the party himselfe shall not be admitted to stultifie himselfe or disable himselfe, but an ideot *a natiuitate* may not make Feoffment, Gift, Lease, or Release, but it may be avoyded, during his Life, by office at the Kings suite, which shall have relation, *a tempore Natiuitatis*, to avoyde all acts done by him, and after his death, the King shall deliver his Lands *Reſſis Hereditibus*. foure manner of men, *de non compos mentis*. 1. An ideot or foole naturally. 2. One which was of good and perfect memory, and by the visitation of God hath lost the same. 3. *Lunaticus, qui gaudet lucidis intervallis*, who sometimes is of good and perfect memory, and some other times, *Non compos mentis*. 4. He that is so by his owne act as a Drunkard.

All acts, which a Lunatick during the time of his Lunacy doth, and all acts which a mad man doth, who once was of perfect memory, and by the act of God, hath lost his understanding, are equivalent to the act done by an Ideot, but the act which a man doth *Qui Gaudet Lucidis intervallis*, at such time as he is of good and perfect memory, shall binde him and are good. And a Drunkard who for the time of his Drunkenesse it *Non compos mentis*, yet his drunkenesse

ness shall not extenuate his act or offence, but doth aggravate his offence, and doth not derogare from the act, which he doth, during the time of his drunkenness, and that as well touching his Life, Lands, and Goods, as any other thing that concernes him. The King shall have the custody of the Land, goods, Chatrels &c. of one *non compos mentis*, to the use of him, his Wife, Children, and Family, a man *non compos mentis*, shall not loose his life for felony or murder, for no felony or murder can be committed, without a felonious intent and purpose, and he is deprived of reason, understanding, and intentions, *Dicta est fellonia quia fieri debet felleo animo, & furiosus non intelligit quid agit, & animo & ratione caret & non multum distat a brutis*, as Bracton saith, and *stultus dicitur a stupore*.

The End of the Fourth Book.

THE



THE FIFTH BOOK.

Claytons Case, 37. Eliz. in Com. Banco. fo. 1.



AN Indenture of demise dated 26. May 25. *Eliz.* to hold for three yeares from henceforth, it was delivered at foure a clock in the afternoone, of the twentieth of *June* after. The Question was, when the Lease should begin, from henceforth shall be taken the day of the delivery *inclusive id est*, from the making or delivery.

Traditio loqui facit cartam, this Lease must end the nineteenth of *June*, in the third yeare after. The day of the delivery is parcell of the tearme, but *a die confessionis*, or *a die datus*, the terme beginneth the day after the date, from the date, and from the day of the date is all one, because that in judgement of Law, the date includes all the day of the date, &c.

E'mers Case, 30. Eliz. Banco Regis. fo. 2.

1. **R**ESolved, that the Statute of 1. *El.* is a private act, whereof the Court shall not take notice without pleading of it. 2. whereas the Bishop ousted his Lessee, for yeares, and made a Lease for three lives, this is voidable by the successor; for, first, the Statute giveth him power to make a Lease
for

for twenty one yeares, or three lives", and therefore cannot make both- 2. Lessee for lives shall have the rent reserved upon the lease for yeares, and shall not pay rent to the Bishop, untill the terme determined, and so hospitality will decay in the meane time, and where 32. H. 8. ca. 8. provided that the old lease be surrendered before the making of a new, illusory surrender upon condition is not within the act, but judgment given against the Plaintiffe for not pleading of the said act of 1. Eliz.

Jewels Case, 30. Eliz. banco regis. fo. 3.

LEase of a faire reserving rent, it not within the Statute of 1. Eliz. for although the rent be due by reason of the contract, yet it is not incident to the reversion, and 'tis also without remedy by assise or distresse.

Lord Mountjoyes Case. 31. and 32. El. Banco regis. fol. 3.

TENANT in tayle according to the Statute, with power to make leases, &c. reserving the ancient rent, maketh a lease of two distinct farmes, reserving the ancient rents in one summe, out of both the farmes, this is a new rent, and not the accustomed rent, and if he reserve a lesser rent (during his life, and after his death) then the ancient rent, the lease is not good.

If Tenant in tayle be seised of three acres of Land, every one of them of equall annuall value, and all have beene demised for three shillings *per annum*, in this case he may not demise one of them for 12. *d. per annum*, or two of them for two shillings *per annum*, and so *Pro rata*.

Justice

*Justice Windams case, fol. 31. & 32. Eliz. Banco regis,
In a Writ of Error. fo. 7,*

A Man leaseth S. for ten yeares, and C. for twenty yeares, and both to another for forty yeares, after the end of the said severall demises, tenne yeares expire, the last lessee enters into S. and upon ouster brings trespassse and recovereth, for the joynt words of the parties shall be taken, *Respective*, and the leases shall commence severally, upon the severall determination of the said leases. Joynt words shall be taken severally. 1. In respect of the severall interest of the grantors, as of two Tenants in common grant a rent charge. 2. In respect of the severall interest of the grantees, as a joynt warranty to two severall Tenants. 3. In respect that the grant cannot commence at one time, as a remainder limited to the right heires of I.S. and I.N. 4. In respect of the incapacity of the grantees, to take joyntly. 5. *Ratione subiectæ materiae*, as rent granted to two copartners for equality of partition. 6. *Ne res destruat, & ut evitetur absurdum*, as in *cessavit*, the tenure is alleadged by homage, fealty, and rent, and *quod in faciendo servitia prædicta cessavit*, it shall be construed to such services onely, as of which a man may cease.

Brudenels Case, 34. Eliz. banco regis folio.

IF a Lease be made to A. during the life of B. and C. without saying, during the life of the Survivor of them, if one of them dye, yet the estate is not determined. But A. shall have the Land, during the life of the survivor; for if a man make a Lease of Land to two persons, during their lives, they assigne
over

over their estate, now the assignee hath estate for life of them too, and if one dye, he shall have the Land, during the life of the Survivor. Note, two diversities th'one a limitation in this Case asorefaid, the other a condition, for if a man demise land for 100. yeares if A. and B. live so long, in this case, if th'one of them dye the Lease is determined, for the Lease is conditionall, and not Determinable by limitation of estate, and the life of a man is collaterall to the Lease, which is but onely a Chattle. If an administrator have judgement and dye, his Executors cannot sue execution of that judgement, but he that shall be subject to the payment of the Debts of the first intestate, and that are not the Executors of the administrator. vide 26. H. 8 fo. 7.

Hensteads Case. 36. & 37. Eliz. com. banco. fo. 10.

A Feme lessor or lessee at will taketh Husband, the will is not determined, for it may be prejudiciall to the Husband to have it determined: So, if one of the Lessees, or Lessors at will dye, but in case where one of the joynt Lessees at will dyeth, nothing surviveth but the others shall pay all the rent.

Jues Case, 39. & 40. Eliz. com. banco. fol. 11.

I. Leaseth a Mannor to S. for thirty yeares, excepting Wood and underwood, growing upon it, and after Lealed to him the Wood for 62. yeares, without impeachment of wast, and leaseth to him the Mannor for thirty yeares, after expiration of the first thirty yeares, thirty yeares expire, S. maketh wast. I bringeth an action of wast. 1. Resolved, by the exception of Wood, and underwood, the soyle is excepted, and the Woods growing, &c. are of abundance.

dance. 2. The Wood remaines parcell of the Manor, because the Lessor had the intire freehold, otherwise if he had leased for life with such an exception, so if one lease a Mannor excepting the advowson for life, the advowson is in grosse for life, but if he grant they advowson for life, it remaines appendant. 3. By the acceptance of the third lease, the said Lease of the Wood for 63. yeares, was presently surrendered, because the Lessee hath assumed the Lessor to be able to Lease.

Saunders Case. fol. 12 41. Eliz. oom-banco.

In an Action of Waste.

IF a man have Land, in part whereof there is a Colemyne appearing, and he demise the Land to another for life or yeares, the Lessee may digge for cole, &c. And the reason is, for that the Myne is open at the time of the demise, &c. and when he demiseth all his Lands, it shall be intended, that his meaning was, that all the profit of the Land should passe, &c. but if the Myne be not open, but within the Bowels of the Earth, at the time of the demise, 'tis otherwise.

Also if a man have in his lands, hidden or unknown Mynes, and Lease the same Lands and all Mynes therein, the Lessee may dig for them.

Rosses Case 41, & 42. Eliz.

A Lease is made to A. and his assignes, for his life, and the life of B and C. this is a Lease for three lives, and the Survivor of them.

Countesse

Countesse de Salops Case, fol. 13.42, & 43.
Eliz. banco regis.

She brought an Action of the Case against *Crompton*, and declared, that she demised to him a House at will, *Et quod ille tam negligenter & improvide custodivit ignem suum quod domus illa combusta fuit*, the defendant pleaded, *Non culp.* and it was found not guilty. And 'twas adjudged, that for the permissive wast, no action lyeth against the opinion of *Brooke*, in Title wast, 52. and the reason of this Judgement was, for that at the common Law no remedy lyeth, for wast either voluntary or permissive, against the Lessee for life or yeares, because the Lessee hath interest in the Land by the act of the Lessor, and it was his folly to make such a lease, and not to restraints him by Covenant, Condition, &c. And by the same reason Tenant at Will shall not be punished for permissive wast: But if Tenant at Will commit voluntary waste, as pulling downe of Houses, cutting of Trees, a generall Action of Trespasse lyeth against him, for that these doe amount to the determination of the Will, without the Entry of the Lessor: but it was agreed, that in some cases where there is confidence put in the Party, an Action of the Case lyeth for negligence, although the Defendant cometh to the possession by the act of the Plaintiffe, as, 12. E.4. 13. If one do commit his Horse to one to keepe safely, the Defendant *Equum illum tam negligentur custodivit quod ob defectum bonæ custodiæ interiit*, an action upon the Case, lyeth for this Breach of trust, also 2 H 7. 11. If my Shepheard which I trust with my Sheepe, and by his negligence they be drowned or otherwise perish, an action upon the Case lyeth against him; but in this Case at the Barre, there

there was a demise at will made to the Defendant, and no confidence repos'd in him, wherefore it was ordered, that the Plaintiffe should not recover by her Bill.

Case of Ecclesiasticall Persons.

43. Eliz. fo. 14. In the High
Court of Parliament.

AT a Parliament holden in this Michaelmas terme it was resolved by the two chiefe Justices, *Popham* and *Anderson*, and diverse other Justices Assistsants, to the Lord of the Parliament, in the upper House, that Leases made to the Queene, by Colledges, Deans, and Chaprers, or any other, having spirituall or Ecclesiasticall Livings, against the provision of the Act, 13. Eliz. ca. 10. are restrained by the same Act, as well as Leases made to common persons, for they are disabled by Parliament to make estates, the King being the head of the Commonwealth may not be an Instrument to defeate the provision of an Act of Parliament made, *Pro bono publico*. For though the Queene by the common Law, had ability to take it, yet in so much the Parliament had disabled them to make states, estates made to the Queene against the Act, are voyd.

Covenants, &c. Concerning Leases, Assurances, &c.

Spencers Case, 25. Eliz. Banco Regis. fo. 16.

A Lessee doth Covenant for himselfe, his Executors, and Administrators, with the Lessor,
N that

that he, his Executors or Assignes shall build a Brick Wall upon parcell of the Land demised, &c. afterwards the Lessee assigns over his tearme to B. in this Case B. is not bound to build the Wall.

When the Covenant extends to a thing *In esse*, parcell of the demise, then the thing to be done by force of the Covenant, is, *Quodammodo*, annexed and appurtenant to the thing demised, and shall run with the Land, and binde the Assignee, although he be not bound by expresse Covenant. But when the Covenant extends to a thing which had not essence, at the time of the demise made, that cannot be appurtenant, or annexed to a thing which had not essence. As if a Lessee Covenant to repaire the houses to him, demised during the tearme, this is parcell of the contract, &c. and shall binde the Assignee, although he be not bound expressly by the Covenant. But in this Case, the Covenant concernes a thing which had not essence at the time of the demise, but to be made after, and therefore it shall binde the Covenantor, his Executors and Administrators, and not the Assignee, for the Law will not annexe the Covenant to a thing which had not essence. It was resolved in this Case, if the Lessee had Covenanted for him and his Assignes, &c. that in as much as it was to be builded upon the thing demised, it should binde the assignee, by expresse words. Also, if a warranty be to one, his Heires and Assignes by expresse words, the assignee shall take benefit thereof, and have a *Warrantia carta*.

But although the Covenant bee for him and his Assignees, yet if the thing to be done be meerly collateral to the Land demised, and doe not concerne the same, the Assignee shall not be charged as if the Lessee Covenant for him and his Assignes to build a house upon the Land of the Lessor, which is not parcell

cell of the demise, or to pay any collaterall Summe of money to the Lessor, or to a stranger, this shall not binde the Assignee. Also in a case of goods, as Sheepe, Chattell, &c. there is not any privity or reversion in the Assignee, but meerey a thing in action in the personalty, which cannot binde any but the Covenantor, his Executors or Administrators, which doe represent him. The same Law is, if a man demise Lands for yeares, with a stock of Cattle, or Summe of money rendring rent, and the Lessee Covenants for him, his Executors, Administrators, and Assignes, to deliver the Stock of Cattle, or the Summe of money, at the end of the Terme, yet the Assignee shall not be charged with the Covenant.

This word (*Concessit*) or (*Demisi*) imports a Covenant, and if an Assignee of a Lessee be evicted, he may have a Writ of Covenant, so shall Tenant by Statute, or *Elegit* of a Terme, or he to whom the Lease is sould by force of any Execution, &c.

If a man grant to a Lessee for yeares, that he shall have so many estovers, as shall serve to repaire his House, or that he shall burne within his House, or such like during the Tearme, that is appurtenant to the Land, and shall run with the same as a thing appurtenant, in whose hands soever the same cometh.

Assignee of an Assignee, Executors of an Assignee, *A S S I G N E S* of Executors, or Administrators of every Assignee, may have Action of Covenant, for all are comprised within this word (*Assignees*) for the same right that was in the Testator, or intestate shall goe to the Executors or Administrators. It was resolved, That the Act of 32. H. 8. c. 24. extendeth onely to Covenants which touch the thing demised, and not to collaterall Covenants.

Slingsbyes Case, 29. Eliz. fo. 18. Upon error, in the Exchequer Chamber.

IF any party Covenantor in a Tripartite Indenture breake Covenant, all the rest of the parties, Covenantees, are to maintaine the Action, notwithstanding the words of the Covenant, are *Et ad & cum quolibet eorum*. But if a man demise to A. black Acre, to B. white Acre, to C. greene Acre, and Covenant with them, and every of them, in this case, in respect of the severall interest by these words, *And every of them*, the Covenant is made severall, but if the demise be made to them joyntly, then these words in the Covenant (And every of them) are made voyd.

A man cannot binde himselfe to three, and to every of them, to make that joynt or severall at the Election of severall persons, for one selfe same cause, for the Court will be in doubt for which of them to give judgement.

It was resolved, that an interest cannot be granted joyntly and severally, as if a man grant, *Proximam advocacionem*, or make a Lease for Terme of yeares of Land to two joyntly and severally, these words severally are voyd, and they are joyntenants; but a power and authority may be joyntly and severally, as to make livery, or to sell, for they have no interest or Action, but are as servants to others. And judgement was reversed.

Roswells Case, 35. Eliz. fo. 19.

Bargainor of Land covenanteth to make to the Bargainee such assurance as his Councell shall advise, the Bargainee himselfe cannot devise it, although

Lib. 5. Higginbottoms Case. 18

though he be Learned in the Law, for then it would be no good plea to say, *Quod consilium non dedit advisamentum.*

Higginbottoms Case, 35. Eliz. Banco regis. fo. 19.

A Parson assumeth to I. S. to make him such an estate in a Rectory, as the Counsell of the said I. S. shall devise, the Counsell shall be given to I. S. and he shall notifie it to the Parson.

Stiles Case, 38. Eliz. Banco regis. fo. 20.

A Charter with the words *Hæc indentura*, without a manuell Act of indenting of the paper or parchment, is not an Indenture.

Sir Anthony Maynes Case, 38. Eliz. fo. 20. Error in Banco regis.

Sir A. M. Leaseth to S. for twenty one yeares, and bindeth himselfe to make a new Lease unto him, upon surrender of the old; and Leaseth to another for 80. yeares by fine. *Scott* the first Lessee bringeth debt, and had judgement. If you be bound to enfeofee one in the Mannor of D. before such a Feast, if you make a Feoffement to another of this Mannor, before the same Feast, you have forfeited the obligation, although that you purchase the Land againe, before the said Feast, because that you were once disabled to make the feoffement.

If a man Lease a Mannor for yeares, and the Lessee covenanteth to uphold the Houses, and to leave the same Mannor in as good an estate as he found it, and during the terme, the Lessee maketh wast in Houses, and cutting of Tymber, &c. the Lessor may

have a Writ of Covenant before the end of the Terme, for cutting the Timber, for it was impossible that the Covenant should be performed after, for the Timber, but otherwise of the Houses, *Fitz. Na. br. fo. 145. K.* It was also resolved, that if a man seised of Lands in Fee covenant to infeoffee I. S. upon request, and after he maketh a feoffement of the same to a Stranger, in this Case I. S. may have an Action of Covenant without request.

Laughters Case, 37. Eliz. fo. 21. Banco regis.

WHere a condition of an Obligation consisteth upon two parts in the disjunctive, and both possible at the time of the obligation made, and after one of them becomes impossible, by the Act of God, the obligor is not bound to performe the other part, for the condition is made for the benefit of the obligor, and shall be taken most beneficiall for him, and he had an Election either to performe the one, or the other, for the saving of his Obligation, but now, *Impotentia excusat legem.*

Hallings Case, 38. Eliz. Com. Banco. fo. 22.

ONe Covenanteth to make an estate in Fee at the costs of the Covenanttee, the Covenantor is to doe the first Act, *Id est*, to Notifie what assurance he will make, that the Covenanttee may know what summe to tender.

Mathewsons Case, 39. Eliz. com. banco. fo. 23.

SEverall persons make severall Covenants in one Indenture, or Writing, the Seale of one of them is broken away, that shall not avoyd the Covenant
of

of the rest, but onely the Covenant of him, whose Seale is so debrused, or defaced. *Vide, Piggots Case,* in the 11. Report, because severall Covenants, otherwise if joynt.

Lambes Case. 41. Eliz. com. banco. fo. 23.

A. Is bound unto B. to give unto B. such a release, &c. before the 22. day of October next, as by the Judge of the Prerogative Court is thought fit. In this Case A. must procure the Judge to doe it, or devise it, for the Judge is a stranger to the condition, and the condition is for the benefit of the Obligor, and he hath taken upon him to performe the same at his perill, but it is otherwise if the Obligee or his Councell should devise it.

Broughtons Case, 43. Eliz. fo. 24. banco regis.

IN an Action of Debt by *Broughton* Plaintiffe against *Pretty*, upon an Obligation, with condition, where the Plaintiffe was bound in an Obligation of 200. *l.* for the Defendant, for the payment of 100. *l.* to C. if therefore the Defendant should save and keepe harmlesse the said *Broughton*, from all Suites, quarrells, and Demands, touching the said Obligation, &c. that then the Obligation to be voyd, &c. at the day of payment of the 100. *l.* the Plaintiffe cometh to the place where the 100. *l.* ought to be paid, and perceiving there not any person present to pay the 100. *l.* for the Defendant, *Broughton* to save the penalty of the Obligation, paid the money to C. and brought his Action upon the Counterbond, and it was adjudged that the Plaintiffe should recover; for the payment of the 100. *l.* is damage and harme. And it is not necessary, whither the

184. *Deane and Chapters Case. Lib. 5.*

Plaintiff was arrested or sued, &c. Terror of suite, (so as he dare not goe about his businesse) is Damnification, although he be not arrested.

Deane and Chapter de Winsors Case, 44. Eliz. fo. 24. Banco regis.

A Man Leased a House by Indenture for yeares; the Lessee Covenants and grants for him and his Executors with the Lessor, to reparaire the house at all times necessary, the Lessee Assignes over, and the Assignee suffereth the house to decay, the Lessor brought an Action of Covenant against the Assignee, and it was adjudged *per Popham*, and all the Court, that the Action lyeth although the Lessee had not Covenanted for his Assignes, because in respect thereof the rent is the lesse, which is, for the benefit of the Assignee, *Qui sentit commodum sentire debet et onus*. If a man grant one Estovers to reparaire his house, this is appurtenant to the house, *Fitz. H. nat. br. 181. 28. H. 8. 28.*

Sir Thomas Palmers Case, 43. El. fo. 24. Banco regis.

Sir Thomas Palmer seised in Fee of a great Wood, Did bargain and sell to one Cornford, and his Assignes 600. cords of Wood, to be taken by Assignment of Sir Thomas, Cornford assignes his interest to one Bassett, and afterward Sir Thomas sells to one Maynard such quantity of Wood as will make 4000. cords at Election of the Vendee; and afterwards Sir Thomas assignes to Bassett 600. cords of Wood, to be taken by him, who doth fall the same, and Maynard did take them away, and converted them, &c. an Action upon the case was brought by Bassett, and judgement was given for him, for Cornford had an in-

interest which he might assigne over, and not a thing in action, or a possibility, for it was resolved, if Sir Thomas did not assigne them to Cornford upon request, Cornford might take them without assignement, for the Grantor cannot by his own act or default, either subvert or derogate from his owne grant. Therefore it ensueth, that Cornford had an interest that he might assigne over. If A. have a house and land, and reasonable estovers in the Woods of another, by view and livery of the Bayliffe, &c. if A. take estovers without view or livery, &c. he is a trespassor, although hee take lesse then he ought to have by livery. But if A. demand his estovers, and the Owner or his Bayliffe will not deliver to him, he may have an Affize. 2. If the Assignement were voyd, yet the Defendant cannot take Trees cut by another, but out of the residue of the Wood.

The Earle of Rutlands case, 2. Ja. fo. 25. Banco regis.

Edward Earle of Rutland seised of the Mannor of Eykering, by Indenture dated 10. March. Anno 21. El. for augmentation of the joynture of Issabell his Countesse, did Covenant with Sir Gilb. Gerrard, and Thomas Houlcroft his Brother, that before the end of Trinity terme, then next following, he would assure by fine, or other conveyance, the said Mannor to the said Sir Gilb. Gerrard, and Thomas in Fee, which fine or other conveyance, should be to the use of the said Earle, and Issabell his Wife, and the Heires of the said Earle, which Indenture was acknowledged and inrolled in the Chancery, the 28. of the same Moneth of March, by another Indenture betweene the said Earle on the one part, and the Lord Burleigh on the other part, and Sir Gilb. Ger. and others on the same part, for the advancement of the Heires

Heires Males, of the said Earle, the Earle did Covenant, &c. to convey the said Mannor amongst others, to the said Lord *Burleigh*, Sir *Gilb. Gerrard*, and others, or to any of them, before the Feast of the Annunciation of our Lady next ensuing, which Assurance should be to the use of the said Earle *Edward*, and the Heires, Males of his body, and for want of such issue, to the use of the Heires Males of *Thomas* Earle of *Rutland*, with divers remainders over, and in the same Indenture, the said Earle *Edward*, did Covenant, &c. to stand seised to the uses contained in the second Indenture. No fine or other assurance was leavyed or made by the said Earle *Edward*, before the end of Trinity Terme.

Afterwards, (*Viz.*) 17. Septemb. next following, the said Earle *Edward*, acknowledged a note of a fine of the said Mannor of *Eckering*, onely to Sir *Gilb. Gerrard*, and *Thomas* Ho: and the Heires of Sir *Gilb.* And the 18. day of the said Moneth acknowledged another note of a fine of the said Mannor of *Eckering*, amongst many other Mannors mentioned in the later Indenture to the Lord *Burghley*, Sir *Gilb. Gerrard*, and other parties to the later Indenture, and both fines were entered in *Ostabis* Mich. next after. And it was proved by diverse testimonies, that the said Earle *Edward*, as well before the Indentures as after the fine leavyed, said, that the said Countesse should have the Mannor of *Eckering*. And it was resolved, by *Popham* chiefe Justice, and all the Court.

First, although the Indenture being made for declaring of uses of a subsequent fine, recovery, or other conveyance, to certaine persons, and within a certaine time, and to certaine uses, yet they are but onely directory, and doe not binde the estate or interest of the Land, yet if the fine, recovery, or other
af-

assurance bee pursued according to the Indenture, there cannot be any averrment made against the Indentures taken in this Case; that after the making of the Indentures, and before the assurance by mutuall agreement of the parties, was concluded and agreed, that the assurance should be to other uses, but if other agreement or limitation of uses, be made by writing or by other matter of as high, or higher nature, then the later agreement should stand, for every contract or agreement ought to be dissolved by matter of as high nature as the first was. *Nil tam conveniens est naturali æquitati quam unum quodq; dissolvi eo ligamine quo ligatum est.*

Also, it was very inconvenient, that matters in writing should be controuled by averrment of parties, to be proved by incertaine testimony of slippery memory, and should be perillous to purchasers, Farmers, &c.

2. It was resolved, that if the forme of the Indentures be not pursued (as for quantity of Land, the time within which the fine should be leavyed, &c.) Averrment without writing may be taken, that the fine, &c. was to other use, then was contained in the Indenture, by reason of a new agreement subsequent which in this case, may be as well by word as writing.

3. It was resolved, that although the Indentures be not pursued, in circumstance of time, quantity, person, &c. yet if no other meane new agreement be proved, the fine, &c. in judgement of Law shall be to the use named in the Indenture. The fines cannot be directed by both the Indentures, although perhaps it was the meaning of the parties, because the directions and declarations of the first Indentures were controuled and frustrated by the said second Indentures.

*Cases of Executors.**Russells Case, 26. Eliz. fo. 27. banco regis.*

A Release by an Infant Executor, under the Age of 21. yeares, is no barre, but upon payment or satisfaction to an Infant Executor, he may acquite and discharge the Debt, for so much as he receiveth: All things that he doth according to the Office and duty of an Executor, shall binde him, an Executor may release before probate of Testament, for although he may not have an Action, yet the Interest of the Action is in Law in him at the time of the release.

Middletons Case. 1. Ja. in com. banco. fo. 28.

IT was adjudged betweene *Middleton* and *Rymor*, that an Executor before probate may release action, although that before the probate, hee may not have action, for the right of the Action is in him: but if A. release, and after take administration that shall not barre him, for the right of the Action, was not in him at the time of the release. Two Executors prove the Testament, the third refuseth, yet he may release *Littlel. 117.* if one be bound to pay a summe of money at a day to come, a release of actions before the day is a Barre, and yet before the day he could have no action.

Harrisons Case, 40. Eliz. fo. 28. com. banco.

IT was adjudged, that a judgement upon Debt due by Obligation, shall be paid before a Statute made

made for performance of Covenants, which are things in contingency, and in future, or other Statutes or recognizances for Debt. *vide Sadlers Case* in the Fourth Booke, although the judgement be after the acknowledgment of the Statute.

Piggots Case, 40. *Elix. com. banco. fo. 29.*

ONE bringeth Debt as administrator, *Durante minore etate*, of one whom he averr'd to be within age, and he doth not say, that he was within the age of 17. yeares, and the Plaintiffe was barred, because at that age the Administration ceaseth.

Princes Case, 41. & 42. *Elix. com. banco. fo. 29.*

AN Infant is made Executor, *Administracione durante minori etate*, may be committed to the Mother or other Friend of the Infant, which shall cease and be voyd, when the Infant is at the age of 17. yeares, and this Administrator may not sell any goods of the Decest, unlesse it be for necessity of payment of Debts, for he hath his Office of administrator, *Pro bono & commodo Infantis*, and not for his prejudice, also he cannot assent to pay legacies, unlesse there be assents to pay Debts, &c. and if it be a Woman under the age of 17. yeares, and take a Husband of full age, the Administration ceaseth.

Where one hath goods solely, in an inferior Diocesse, yet the Metropolitan of that Province, pretending that he had *Bona notabilia*, in diverse Diocesses, committed the Administration, &c. (this Administration is not voyd, but voidable by sentence, because the Metropolitan hath Jurisdiction in all places within his Province, but if the Ordinary of one Diocesse commit the administration of goods, when the party

party hath *Bona notabilia*, in diverse Diocesse, this administration is meerely voyd, as well for his goods within the Diocesse as without, *vide, Vere & Jeffrays Case, 22. Eliz. in banc le roy*, there cited and so adjudged.

Coulters Case. fo. 30. 40. & 41. Eliz. banco regis.

AN Executor in his own wrong ought not to retaine goods in his own hands to satisfie his owne just Debt, for every Creditor by such meanes when the goods be not sufficient, would strive to make himselfe Executor, *De son tort*, to satisfie himselfe, and barr others, &c. And it is not reasonable that one should take advantage of his owne wrong, *Non facies malum, ut inde fiat bonum, & melius est omnia mala pati quam malo consentire.* It is also cleere, that all lawfull acts, that such an Executor doth, or disseisor or an abator, &c. are good.

Hargraves Case, 41. and 42. Eliz. banco regis. fo. 31.

Lessor bringeth Debt against the Administrator of the Lessee for yeares, for rent due after the Administration committed in the Debet, and so it ought to be, because he himselfe tooke the profits, and nothing is assests in his hands, but the profits, besides the rent, but in all Actions brought by Executors (as Executors) the Writ shall be alwayes in the *Detinet tantum*, although the duty accrew in the owne time.

Pettifers Case, 45. Eliz. banco regis. fo. 32.

UPon a *Fieri facias de bonis testatoris*, the Sheriffe returneth *Nulla bona*, a Writ issueth to the

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the Sheriffe to inquire by inquest, if the Executors have wasted, and how much, who returneth that they have, and judgement given against them, *De bonis proprijs*, they bring error *in redditione Executionis*, and the Execution was reversed, for the course is, upon *Nulla bona*, to have a speciall *Fieri Facias* to make Execution *De bonis proprijs*, if they have wasted, and if the Sheriffe so doth, where they have not wasted, they have remedy against him: but if he taketh an inquest, and returneth it, although it be false, there is no remedy against the Sheriffe, or any other.

Robinsons Case, 1. Jac. com. banco. fo. 32.

Executor brings Debt as Administrator, and is barred by Plea, that he is Executor, he may bring Debt, as Executor, for he was barred, as to the Action of the Writ, to have Debt as Administrator, but not to the Action.

Reades Case, fo. 33. 2. Jac. com. banco.

When a man dyeth intestate, and a strange person taketh the goods of the intestate, and useth them, or sells them; this maketh him an Executor of his owne wrong, for when none assumeth to be Executor, nor takes Letters of Administration, there the using of the goods is sufficient to charge one as Executor, *De son tort*, for those to whom the Deceast was indebted unto, have not any other in this case, against whom they may bring their actions, for recovery of their Debts. When an Executor is made, and he proveth the Testament, or assumeth upon him the charge, and doth administer, in this case, if a stranger take any of the goods, and claime them for his owne, this doth not make him an Executor

cutor of his own wrong, because there is another lawfull Executor.

A lawfull Executor shall not be charged, but with the goods that come to his hands, after that he assumes upon him the charge of the Will, &c. but if another man first take the goods, &c. before the lawfull Executor hath assumed the Execution, or proved the Testament, in this case, he may be charged, as an Executor of his own wrong.

*Construction of the Statutes of Jeofails,
&c. Amendment of Records, Fines,
Recoveries, &c.*

Playters Case, 25. & 26. Eliz. Banco regis. fo. 34.

THE Defendant was found guilty in trespassse, *Quare clausum fregit & pisces suos cepit*, and damages assessed intirely; it was moved in arrest of judgement, because in the Count, neither the nature nor the number of Fishes was shewed. It was answered by the Plaintiffe, That the Defendant is found guilty to damages, and so *Non refert*, of what nature or number they are. 2. That the Fishes themselves are not to be recovered but damages for them, therefore no need to shew the certainty. 3. All the damages shall be intended to be given for the close broken, which is laid in the Declaration. 4. It is matter of forme, ayded by the Statute of 18. *Eliz. cap. 14.* But judgement was stayd, for the Office of the Declaration is to reduce the Writ to certainty, for otherwise upon such a generall Issue, if the Jury give a false Verdict, they cannot be attainted, and damages shall be intended to be given for all, because

cause they are intire, but if they had beene severed, the plaintiffe shal recover for so much as is well pleaded, and this is matter of substance, and not of forme, because it is no default of the Clerke, but of the plaintiffe, and therefore not aided by the Statute.

Walcots case; 30. Eliz. Banco regis, fo. 36.

DEbt was brought against Baron and Feme, in the *Detinet tantum*, upon an Obligation by the Feme before Marriage; it ought to be in the *Debet*, and *Detinet* because the Baron had the goods of the wife in his owne right, and for that reason debt is brought against the Heire in the *Debet*, and this is matter of substance, and point of the Action, not remedied by the Statute of 18. *Eliz. c. 14.*

Baynehams Case 30. Eliz. in Scaccar, fol. 36.

AN *Ejectione firma* of Lands in A. B. and C. tried for the Plaintiffe by a Visne out of A. onely, this is insufficient and not remedied by any Statute.

Gardiners case, 21. Eliz. Banco regis, fo. 37.

23. Jurors are returned, 12. appeare and finde for the Plaintiffe, this is remedied by 18. *Elizabetha ca. 14.*

Bishops case, 34. Eliz. banco regis, fol. 37.

Variance is betweene the Writ and count in name, the Plaintiffe recovers, the Defendant bringeth Error, the Writ was removed into the *Kings Bench*, and the judgement was reversed, because the Statute

remedieth where there is no Originall, but not where the originall is vitious, and although it were removed after pleading, &c. yet because the fault appeared to the Court, the judgement was reversed.

Tey's case, 34. Eliz. Banco regis, fo. 38.

BAron and Feme levy a fine to one who grants and renders to them two, and to the Heires of the Baron, and after renders part to the Feme in taile, the remainder over, the Heire of the Husband brings a Writ of Error, and assignes for error the said Variance. 1. Resolved, that there needeth not a precise forme in render upon a fine, but it shall be in this case construed, as a grant by Charter, for it is but a grant of record.

2. There are five parts of a fine.

1. The originall.

2. The Licence to accord, for which the Kings Silver is due, and ought to be entred upon the Writ of Covenant, and the summe, and he who payeth it, that is, he in whom the fee reposeth, the Plea, and betwixt whom, &c. and the Land ought to be mentioned.

3. The concord which is the substance of the fine, for if upon that, the Kings silver be paid, although the party dye, the fine is good.

4. The Note, which is many times taken for the Concord.

And lastly the Foot of the Fine, after delivery of the Indentures of the fine, the fine is said to be ingrossed.

3. The Conusor shall not assigne error in the render, because it is to his advantage, and none shall assigne Error, except it be to his disadvantage.

Dormer's Case 35. *Eliz. Banco regis. fo. 40.*

A Common recovery is had in a Writ of Entry, in the *Post de uno annuali redditu sive pensione quatuor marcarum*; and of an advowson, whereupon a Writ of Error is brought. 1. Because every *præcipe* ought to be certaine, but here it is in the Disjunctive. 2. A Writ of entry in the *Post* lyeth not of an advowson: But judgement was affirmed, and thereby 'twas resolved. 1. That a comon recovery is not like to other recoveries, for it may be averred to an use. 2. It is by mutuall consent & *consensus tollit errorem*. 2. A Writ of entry in the *Post* lyeth of an advowson common, &c. to suffer a common recovery and not otherwise, for no other assurance can be had to bar the remainders.

2. The demand of the Rent is good, for one of two things is not demanded, but one thing by two names, for rent and pension are *Synonima*, and the rather here, because it is said to issue out of Land, which a Pension properly cannot. 3. Common recoveries are so usuall, that the Court shall take notice that they are common recoveries.

Rowlands case, 35. *Eliz. Banco regis, fo. 41.*

A Pannel of a Jury is annexed to the *Venire facias* without returne, this is vicious and not remedied by 18. *Eliz. cap. 14.* for that remedieth insufficient returns but not where no returne.

The Countesse of Rutlands case, 36. Eliz. fol. 42.

Robert Moore is returned upon the *Venire facias*, but in the panell before the Justices of *Nisi prius*, and in the *Postea* he was named *Robert Mawre*; if it appeare that *Moore* is his right name, and that it is he who is sworne, it is good, for by the common Law this was a discontinuance against all the Jurors, and discontinuances are aided by the Statute, otherwise if it were mis-named in the *Venire facias*, and had his right name in the *Panell* and *Postea*.

Codwells case, 36. Eliz. Banco regis, fol. 42.

A Juror who gave verdict, was misnamed in the *Venire facias*, and had his right name in the *Distringas*, and *Postea*, and for that the judgement was arrested.

Nichols case, 38. Eliz. Banco regis, fol. 43.

C Brings Debt upon a single Bill against N. who pleaded Payment without acquittance, which was found for the Plaintiffe, although issue was joyned upon a point not materiall, yet after verdict this is aided by 32. H. 8. and 18. Eliz.

Bohuns Case, 39. Eliz. fol. 43.

A Fine was levied of a Mannor and other Lands, to the value of twenty Marks *per annum*, so that the Kings silver is 40. s. which was paid, but in entering of it upon the Writ of Covenant, the mannor was omitted, and thereupon error was brought; but after that, the transcript of the fine was removed into the Kings Bench, the Iudges of the common place

place amended the Record, because it appears to them that the Kings silver was paid for the Mannor, and where the Writ of Covenant was, *Dede meipso*, for *Teste meipso*, they amended that also, and certified it into the Kings Bench upon diminution, and allowed.

Freemans Case, fol. 45. 41. Eliz. Banco Regis.

IN an originall Writ, &c. *Quod nullus faciat vastum venditionem & districtionem*, where it should be *districtionem*, the fault was onely in one Letter, the Court resolved upon good Consideration, that it was matter of substance: for *Districtio* is a Laine word, and altereth the sence of the Statute; and matter of Substance in an Originall Writ is not remedied, but matter of forme onely, *Vide Statute 32. H. 8. ca. 30. & 18. Eliz. ca. 14.*

If an Originall at this day want forme, or containe false Latine, or vary from the Register in matter of forme, after verdict no judgement shall be stayed or reversed. But if it want substance, although it be the misprision of the Clerke, this is not remedied by any Statute.

Gages Case, 41. Eliz. Banco regis, fo. 45.

A Writ of Covenant to levy a fine, boare date after the returne, this is amendable because a common assurance, but in other actions no amendment, &c.

Cookes Case, 41. Eliz. com. banco. fol. 46.

A Common recovery of the Mannor of *Issfeld*, by the name of *Issfeld*, is amendable, because it appeared

peared to the Court, by collaterall things, shewed unto them that *Isfeld* was intended to passe.

Cases of Pardons.

Franchkelyns Case, 36. Eliz. fol. 46. in the Star-Chamber.

A Bill was exhibired for a Ryot in the Star-Chamber, five yeares before the generall pardon, 35. *Eliz.* and it was resolved that the Kings fine was accepted, but not the corporall punishment, but if it were exhibited within foure yeares, all shall be accepted. In this case, the Kings Attourney may proceed for the fine.

Guilbert Littletons Case. 39. Eliz. fol. 47. Star-Chamber.

A Bill exhibited in the Starre-Chamber before the Parliament 35. *Eliz.* and returned after, this is accepted out of the generall pardon, for it was depending before the returne, but if an Originall Writ issueth out of the Chancery, returnable in the common place, this is not depending before the return, because out of another Court, but after the returne, it shall be said depending by relation, from the day of the *Teste*: and if the Tenant alien before the returne and after the *Teste*, this shall be said an alienation, pending the Writ.

Drywoods Case, 42. Eliz. Star Chamber, fo. 48.

A Bill in the Starre-Chamber more then foure yeares, and within eight yeares, before the Parliament

ment in 39. *Eliz.* the Plaintiffe dyeth before the generall pardon, this is pardoned, for this doth not depend now, and the words remaining to be prosecuted, shall be intended for the party, and not for the Kings Attourney.

Vaughans Case 40. Eliz. Banco regis, fol. 49.

A A Writ of entry in the *Quibus*, depends in Wales, before the generall Pardon, and after the Demandant had judgement, but the Tenant was not amerced. 1. Resolved, the Amercement is pardoned, because the *Torte* was pardoned, which together with the delay was the ground thereof. 2. The Statutes of *Jeofailes* extend to Wales, because it was made parcell of England, by the Act of 27. *H. 8.*

Wyrrells Case, 41. Eli. In the Exchequer. fol. 49.

THE Queene brings debt upon an Obligation made by the Defendant, to one who was Outlawed, the Defendant pleads the generall Pardon; and although that debts due to the Queen are excepted, yet debts originally due to the Subject, and after came to the Queene, are not excepted, also the generall pardon is to be taken beneficially, for the subject, and most strong against the King.

Biggins Case, 41. Eliz. Banco regis. fol. 50.

THE King may pardon burning in the hand, where the defendant is found guilty of Man slaughter, and hath his Clergy in an appeale. 1. Because it is but to notifie to the Judges, that he hath once had his Clergy, and that he shall not have it againe, by the Statute of 4. *H. 7. c. 13.* 2. Because it is

no part of the judgement, and the party shall goe at large, although he be not burned by good construction of the Statute of 18. *El 2. c. 7.* which provideth, that after Clergy allowed and Burning, he shall goe at large, for otherwise when he is pardoned, he shall be imprisoned for ever. In the Star-Chamber, the King may pardon corporall punishment for forgery, &c. but not if attainted at the common Law in an Action of forgery of false needs.

Halls Case, 2. Jacobi com, banco, fol. 51.

A C. Libelled, for defamation in the Court Christian against H. and had sentence and costs taxed at a day to be paid, A. sueth an appeale, and obtaines a pardon from the King, and brings a prohibition. 1. Resolved, all Suites in the Court Christian, *Pro salute animæ, or reformatione morum*, are for the King as Suits in the Star-Chamber, and he may pardon them before or after the Suite comenced, but he cannot pardon, where the party sueth for a thing in which he had interest, as Tythes. 2. All proceedings in the Court Christian *Ex officio*, are for the King, and he may pardon them. 3. Although the suite may be pardoned, yet he cannot pardon the costs which are taxed. 4. Although the sentence by the appeale is suspended to many purposes, yet untill re-verfall, the party had interest in the costs, nor pardonable, and after a consultation was granted for the costs.

Pages Case, 30. Eliz. in the Exchequer, fol. 52.

I Demiseth to his wife who is an Alien, and before the death of the Testator indenized, the date of the Letters Patents is corrupted, so that they bore
dae

date after his death, she obtaines an exemplification, by Commission under the Exchequer Scale, it is found that she was an alien, and an Information is brought against her, and she pleads the exemplification. 1. Resol. This office is void, for every office of Intitling, as this is; ought to be by Commission under the great Scale; but an office of Instruction may be under the Exchequer Scale. 2. It appeared not, what authority the Commissioners had; but *Inquisitio capta virtute Cujusdam Commissionis*, &c. 2. That the exemplification was pleadable by the Statute of 13. Eliz. c. 6, which extends to all Patents whatsoever without any restraint: An Exemplification, and an *Inspecimus*, as an *Innotescimus* and a *Vidimus* are all one: A Constat cannot be had without Affidavit, and it is when Letters are casually lost; An *Innotescimus*, or a *Vidimus*, are alwayes of a Charter of Feoffment, or other Instrument, not of Record.

Knights Case, 31. Eliz Communi Banco. fol. 54.

THe Prior of St. John of Je. 29. H. 8. Leased divers houses, reserving 5 li 10. s. 11. d. per annum at the four usuall feasts in L. viz. for one house 3. li. 11. d. and so severally of the others, with condition of re-entry for non payment, and after surrenders to H 8. who in Anno 36. grants one house to the Lessee, and another in fee, the Lessee dyeth; It is found by Inquisition in the Com^r. of Mid^r. by Commission under the Exchequer Scale, that 37. s. 4. d. parcell of the said rent was arrear at M. for a quarter of a year, before the return of the office or seizure the King grants the residue of the houses to one who leaseth to the Plaintiffe, who upon entry of the Executors of the first lessee brings trespass and the Court being divided, it was argued in the Exchequer Chamber by all the Judges.

1. Re-

1. Resol. This is an intire Lease, and the viz. is but a declaration of the severall values of the houses, and no severance of the reservation, but by apt words divers parcells may be severally leased by one demise, and severall rents reserved. 2. Admitting them severall rents, yet the condition is intire, and in case of a common person by severance of any part of the reversion, will be extinct. 3. This being in case of the King his patentee of part shall not take advantage of the condition, but the King himselfe may, and the patentee to whom he grants the residue, although the Lease originally made by a Subject. 4. Although it be found that more was arreare then was reserved quarterly, yet it sufficeth that the office had matter of substance, and the Jury in M. may finde which are the usuall feasts in L. 5. The grant after office and before the returne of it is good, and by entry without other seisure the Lease is voyd. 6. This office under the Exchequer Seale is sufficient to intitule the King to a Chattell.

Specots case. 32. Eliz. Banco Regis in Error fol. 57.

So sa feme bring a *Qu. impedit* against the Bishop of E. and declare that J. A. was seised of a Mannor, to which an advowson was appendant, and demised it to the feme for life, and they presented D. W. who dyed, and so it belongs to them to present; the defendant pleads that the plaintiffe presented one who is *schismaticus inveteratus*, whereof he gave notice to the Plaintiffe; It was adjudged for the plaintiffe, in the common place, an Error brought thereupon.

1. Error. Because no presentment alledged in J. A. but over-ruled for the presentment of the plaintiffe, is sufficient for themselves. 2. The Bishop ought

ought not to shew any particular schisme, for the Court of the King cannot judge of it, but the Bishop is judge : also it is cause to remove a Coroner, *quia minus idoneus* : It was answered that he ought to shew the heresie in certaine, and although the Bishop is Judge, yet because his Act is not of Record, it is traversable, and although it belongs not to the Kings Court to judge of Heresies, yet the generall cause of suite being in their consuance, they shall determine of it by advise of Divines, and the cause of removing a Coronor is not traversable. 3. The Bishop is twice amerced, and a man can be amerced but once towards one man, &c. It was answered, that he was but once amerced ; for the Judgement in the Kings Bench was but a rehearsal of the former, yet admitting the second Judgement thereby voyde ; nevertheless the first Judgement is good by the common Law without damages, *Quod fuit concessum per totam Curiam.*

Fostar. 32. El. in Banco le roy. fo. 59.

IT was resolved that the Constable having a warrant to bring one *coram aliquo Justiciar.* &c. it is at the election of the Officer to bring the party so attached to what Justice he will ; For it is greater reason to give the election to the Officer, who (in presumption of Law) is a person indifferent, and sworne to execute his office duly then to the Delinquent. Wray chiefe Justice said, that a Justice of Peace may make his warrant to bring the party before himselfe, and it is good and sufficient in Law ; for it is most like, that he hath the best knowledge of the matter, and therefore most fit to do Justice in that matter : upon refusall to finde surety, the Constable may commit him without a new warrant.

Gooches

Gooches Case. 32. El in Banco le roy. fol. 60.

VVRay chiefe Justice said, that if A. make a fraudulent conveyance of his Lands to deceive a purchaser against the Statute of 27. El. and continueth in possession, and is reputed as owner ; [B. entereth in communication with A. for the purchase, and by accident B. hath notice of this fraudulent conveyance ; Notwithstanding he concludes with A. and takes his assurance. In this case B. shall avoyd the said fraudulent conveyance by the said Act, notwithstanding the notice ; for the Act by expresse words hath made the fraudulent conveyance voyd, as to the purchaser. And for as much as that is within the expresse provision of the Statute, it ought to be taken and expounded in suppression of fraud, Resolved, that fraud may be given in Evidence, because the estate is voyd by the act of 13. Eliz. and fraud is hatched in secret, *in arbore cava & opaca.*

And according to this opinion, it was resolved *Per tot' Cur' in communi banco Pasche 3^o. Jac.* where one Bullock had made a fraudulent estate of his Lands within the Statute of 27. Eliz. to A. B. and C. and after offered to sell the same to one Standen, and before the assurance by Bullocke, Standen had notice thereof, and notwithstanding proceeded, and tooke the assurance from Bullock, Standen avoyded the former assurance of fraud by the said act, for the notice of the purchaser cannot make that good, which an Act of Parliament hath made void as to him. And it is true, *Quod non decipitur qui scit se decipi.* But in this case the purchaser is not deceived ; for the fraudulent conveyance whereof he had notice is made void, (as to him) by the Statute, and therefore he knew it could not hurt him.

Sparries

Sparries case. 33. Eliz. in Scaccar, fol. 61.

IN action of Trover and conversion, the defendant pleads that there is another action depending in the Kings Bench for the same Trover, and good; for in actions which comprehend no certainty, as assize or trespass, this is no plea before a Count; because thereby it is made certaine, and then it is a good plea, and not before: but in this action and debt and detinue, it is a good plea at the first, because they are certaine: that an action is depending in an inferior Court is no plea.

Cases of By-laws.

*Chamberlaine de Londons case. 31. El, in Banco
le roy. fol. 66.*

THE Inhabitants of a village without any custome, may make Ordinances or By-Lawes for reparation of the Church, or of high-ways, or any such thing, which is for the publique weale generally; and in this case the consent of the greater part shall binde all without any custome, *vide 44. E. 3. 19.* But if it be for their owne private profit for that Towne, as for their well ordering of their common of pasture, or such like, then without custome they cannot make by-Lawes. And if it be a custome, yet the greater part shall not bind all, if it be not warranted by the custome; for as custome hath created them, so they ought to be warranted by the custome, *8. E. 2. in ass.* As pontage, murage, tolle, and such like, as appeareth in *13. H. 4. 14.* In which cases the summes for reparations of the Bridge walls, &c. ought to be so reasonable, that the Subject may have more benefit thereby then charge.

Clerks

Clerks case. 38. Eliz in communi banco. fol. 64.

King Edward 6. did incorporate the Towne of St. Albones, and granted them to make Lawes and Ordinances, &c. The Tearme was kept there, and the Major, &c. by assent of the Plaintiffe, assessed every Inhabitant for the charges in erecting of the Courts there, and if any did refuse to pay, &c. to be imprisoned, &c. the plaintiffe being Burges refused to pay, &c. and the Major justified, &c. and it was adjudged no plea, &c. For this Ordinance is against *Magna Charta*, ca. 29. *Nullus Liber homo imprisonetur*, which act hath been confirmed divers times (*viz.*) thirty times, and the assent of the Plaintiffe cannot alter the Law in this case. But it was resolved that the Major, &c. might inflict reasonable penalty, but not imprisonment, which penalty ought to be levyed by distresse; for which offence an action of Debt lyeth, and the plaintiffe in this case had judgement.

Jeffrays case Michaelis 31, 32. en Bank le Roy. fo. 66.

VVilliam Jeffray Gent. brought a prohibition against Abraham Kensbley, and Thomas Foster, Churchwardens of Haylesham in Com' Suffex, for that they sued him in Court Christian before Doctor Drury for certaine money imposed upon him without his assent, for repaire of the Church, That the Churchwardens, with the assent of the greatest part of the Parishioners *juxta quantitatem & qualitatem possessionum & reddit' infra di' parochiam existent.* Determined and agreed to make a taxation for repaire of the said Church, and that notice of such assembly was given in the Church, at which day the Churchwardens and greater part of the Parish, which were there

there assembled, made a taxation (*viz.*) every occupier of Land for every acre 4*d.* &c. Geffray dwelt in another Parish; and declared that the Parishioners of every Parish ought to repaire their Church, and not the Church of another Parish. Cooke of counsell with the defendant demurred in Law, and after many arguments a Writ of consultation was granted. And it was resolved, That the Court Christian hath *conulsans de reparatione corporis sive navis Ecclesia*: Bryton who writ in 5. E. 1.

And in the Statute of *Circumspecte agatis*, but in *Rebus manifestis errat qui auctoritates legum allegat quia perspicue vera non sunt probanda*. It was also resolved, that although Geffray did dwell in another Parish, yet for that he had lands in the said Parish, in his proper possession, he is in the Law *Parochianus de Haylesham*.

But it was resolved, that where there was a Farmor of the same Lands, the Lessor that receiveth the rent shall not be charged, but the Inhabitant is the Parishioner and the receipt of the rent doth not make the Lessor a Parishioner.

Divers of the Civill Lawyers certified the Court, that the Church-wardens, and a greater part of the Parishioners (upon a generall warning) assembled; may make a Taxation by their Law; and the same shall not charge the Land, but the Person in respect of the Lands for equality and indifferency, and this was the first leading case that was adjudged and reported in our Books touching these matters, and many causes after were adjudged thus, and now it is generally received for Law.

*The Lord Cheneys Case. 33. Eliz. In cur. Wardo.
fol. 68.*

IN a devise of Lands by writing, an averment out of the will, shall not be received for a Will concerning Lands, &c. ought to be in writing, and not by any averment out of the same; otherwise it were great inconvenience that not any may know by the written words of the Will, what construction to make, if it might be controuled by collaterall averment out of the Will.

Cases of Usury.

Burtons case, 34. Eliz. banco regis, fo. 69.

A Lends to T. W. 100. l. 7. July 21. Eliz. in consideration of which, T. W. grants to him a rent charge of 20. l. per annum, the first payment to be at the Nativity, 1580. upon condition of payment of the said 100. l. this is out of the Statute of Usury, for he had a 100. l. for a yeare and a quarter, without consideration, and if he pay it within this time, A. shall not have the rent, so that he was not assured of any consideration: But if it were agreed betweene them that the 100. l. shall not be paid, this is within the meaning of the Statute. A Demurrer is a confession of all such matters in fact onely, as are well and sufficiently pleaded.

Claytons case, 37. Eliz. Com'. Banco. fo. 70.

THirty pound was lent for halfe a yeare to have for it thirty-three pound, if the sonne of the
obli-

obligee be then in life, if not 27 pound, this is within the intent of the Statute of Usury: *Usura dicitur ab usu & are, [quasi usuata, (1.) usus aris; Et usura est commodum certum, quod propter usum rei mutuatæ recipitur: Glandville, lib. 7. cap. 16.*

Hoes Case, 34. Eliz. fol. 70.

A Duty certaine upon a condition subsequent may be released, before the day of the performance of the condition, but a dutie uncertaine at the first, and upon condition precedent to be made certaine after, this in the meane time is but onely a meere possibility, and therefore cannot be released. And it was adjudged 4. *El. in communi banco*, that by a release of all actions, suites, and quarrels, a covenant before breach of it is not released thereby. But by a release of covenants, the covenantor is discharged before the breach, *vide Litt'. 170.*

A release in the time of vacation to the Patron dischargeeth an annuity, wherewith the Parson is charged in respect of the parsonage, and a warranty may be released before suite, because he may have a *warrantia chartæ.*

St. Johns Case, Eliz. Banco Regis, fol. 71.

DAggs, Pistolls, &c. are within the Statute of 33.

H. 8. ca'. 6. the same Statute doth prohibite Crosse-bowes, and under the same name stone-bowes are forbidden; for if a small alteration or addition should defeat the penalty of the act, the Statute should be of small effect. And it was resolved, that the Sheriffe, or any of his Officers, for the better execution of Justice, may carry handguns or other weapons invasive or defensive, and not restrained by the

generall prohibition of the said act, vide 3. H. 7. fo. 1.

Williams Case. 37th Eliz. Banco Regis. fol. 72.

ONe man shall not have an action of the Case for common Nufans made in the high way, because it is a common Nufans, and it is not reason, that any particular person should have an Action, for then every particular person might have an action for the same, and so thereby one might be punished an hundred times for one cause. But if any particular person have more particular damage then another, he may have a particular action upon the Case for this particular injury, and for common Nufances, which are equall to all the Kings people; the common Law hath appointed other Courts (*viz.*) Leers, &c. A prescription to do Divine Service in a Chappel for the Lord and his Tenants is remediable only in the Court Christian; but for the Lord and his private family, an action of the Case lyeth for the Lord onely.

Case of Orphanes of London. 35. Eli. Banco Regis, fol. 37.

IF any Orphane of London sue for goods, &c. in the Court Christian, or of Requests, a prohibition lyeth, because their government by their custome belongs to the Major of L. So if a Will be proved in the Court Christian, the probate whereof belongeth to the Lord of a Mannor.

VVymarks Case, 36 Eliz. Banco Regis, fol. 74.

PLaintiffe in an *Ejectione firme*, counts of a Lease of R. S. the defendant pleads in Barre as Indenture of bargain and sale (and sheweth it) by the said R. S. to E. W. who was seised untill disseised by R. S. who

who leaseth to the Plaintiffe, and he as servant to E. W. enters; Three Termes after the Plaintiffe, replies, that the bargain and sale was upon condition, which was broken, and the bargainor entred and leaseth to him, and did not shew forth the deed of bargain and sale: Judgement given for the defendant.

1. Resol. When a Deed is shewed to the Court, it remaineth in the Court all the Terme in Judgement of Law, because the Terme is but one day in Law, and this as well to strangers as parties, to take advantage thereof without shewing, but at the end of the Terme it shall be delivered to the party, if it be not denied, for then it shall remaine in Court to be damned, if it be found not his Deed.

2. The Course in the Kings Bench is, that imparlances to plead in barre are entred, but not imparlances to reply or rejoyne, so that the Replication here, although it be three Termes after the Barre, yet it shall be intended here the same Terme, and so he shall not need to shew the Deed.

Cliftons Case, 35. Eliz. fol. 75.

IF a woman Tenant for life take a Husband which committeth waste, and after the wife dyeth the husband is dispunishable of and for such wast; for the Writt is *Quare de communi consilio, &c. provisum sit quod non liceat alicui vastam venditionem seu destructionem facere de terris, &c. sibi demissis ad terminum vite vel annorum, &c.* And in this case the Husband hath not any estate for life in this land; but the wife hath estate for life, and the husband but onely an estate in her right; and so he is not within the Act.

Pilkingtons Case. 43. Eliz. in Banco le Roy, fol. 76.

IT was resolved, *Per tot' Cur*, that when a distresse is taken for damage fesant, that the party may tender amends untill the beasts be impounded; but after they be in the pound, they are in the custody of the Law, and then the tender cometh too late. It was also resolved, that tender of amends to the Bayliffe or servant that taketh them, will not serve; for he cannot deliver the distresse once taken, no more then change the avoury of his Master, or demand rent upon acondition of reentry.

The Earle of Pembrokes Case, 36. El. banco regis, fol. 76.

WHere the defendant sheweth a deed to the Court the Plaintiffe may pray it to be entred *in hac verba* the same terme, but not after.

Pagetts case, 35. El. in communi Banco, fol. 76.

IT was resolved, that if tenant for life, the remainder for life the remainder in fee, if tenant for life maketh wast in trees, and after he in remainder for life dye, an action of wast, is maintainable, for the wast done in the life of him in remainder for life, because it was to the disinheritaunce of him in remainder in fee. And now the impediment (which was the meane estate for life) is taken away. *Et remoto impedimento emergit actio*; It was resolved that when the trees are cut downe, the property thereof belongeth to him in remainder in fee. And where it is said in some Bookes, That he in remainder or reversion in fee, shall not have an action of wast, it is to be intended, during the continuance of the meane remainder.

der. And in other Bookes is said in this case, that an action of wast doth lye, it is intended after the death of him in remainder for life.

Booths case, 36. Eliz. in communi banco. fol. 77.

George Booth brought an Action of waste against *Skevington*, and declared that Sir *VVilliam Booth* demised for yeares to *Enfor*, who assigned to *Skevington*. The Defendant pleaded an assignment to *Elizabeth Cave*, before which assignement no wast was made; the plaintiffe replied, and shewed the Statute 11. H. 6. ca. 5. and that the grant to *Elizabeth Cave* was made to the intent he should not know against whom to bring his action, and averred that *Skevington* did take the profits; the defendant rejoined that *Elizabeth Cave* granted her estate to A. who demised to the defendant at will, and traversed the fraud, &c. the plaintiffe demurred, it was resolved, that every assignee of every Lessee mediately or immediately is within the said act; for the Statute was made to suppress fraud, and deceit, and therefore it should be taken most beneficially. Secondly, that he in remainder is within the said act, as well as he in reversion. Thirdly, The intent of fraud aforesaid, is not traversable, but the taking of the profits, which is a thing notorious, whereof the Country may have knowledge. In a formedon the Tenant pleaded, *Non tenure*, the demandant said, that he made a Feoffment to persons unknowne, to defraud him of his tenancy, and to keep the profits, the pertinancy of the profits, and not the Feoffment is traversable.

Samons Case. 36. Eliz. Banco Regis. fol. 77.

THE Plaintiffe and Defendant referred all controversies to the Arbitrement of I. S. who did arbitrate that the Defendant shall enter into an obligation to the Plaintiffe, that the Plaintiffe and his wife shall enjoy certaine lands which he had not done; this is voyd for the incertainty of what summe the obligation shall be, for the award ought to be certaine, like a Judgement: Also the award was void as to the feme, for she was a stranger to the submission.

Graves Case. 37. Eliz. Banco Regis, fol. 78. Replevin.

THE Plaintiffe intitles himselfe in Barre to the avowry to Common, &c. which was traversed, the Jury found that every, &c. time of minde have used to pay for the Common a hen and five egges; the Plaintiffe had judgement, for he needs not shew more then makes for him, for this is not *Modus communia*, paying so much, nor parcell of the issue, but a collaterall recompence to be paid for the Common, to which the Terretenant had remedy, but if the Terretenant had no remedy, then the Commoner shall have the Common *Sub modo*, and may be disturbed by the Terretenant.

Fitz-Herberts Case, 37. Eliz. Banco Regis. fol. 97.

THE Father Tenant for life, the remainder to the Sonne in taile, leaseth for yeares to A. to the intent to barre the sonne, A. infeoffeth I. S. to whom the Father releaseth with warranty, and dyeth, this doth not barre the Sonne, for although that the disseisin which is made by the seoffment, precedes the warren-

warranty, yet because it was to that intent, the Law will adjudge upon the intire act, and so a warranty by disseisin. 2. Although the disseisin was made to the Father, yet because he consented unto it, the warranty commenceth by disseisin; but if the Father had made a feoffment in fee and dyed, this shall binde the son, if it be with warranty.

Foordes Case, 37. Eliz. Com'. Banco, fol. 81.

A Prebend leaseth for 70. An. Patron Deane and Chapter confirme *dimissionem predictam in forma predicta fact.* for 51 yeares & non ultra; this is a confirmation for all the Terme; for when they confirme *dimissionem*, &c. for 51 yeares, it is repugnant, but if they had recited the Lease, and confirmed the Land for 51 yeares, this had been good, for they have an authority, coupled with an interest, otherwise if onely a bare authority: but by what words soever they confirme a lease for life, or gift in taile for part, this is a confirmation of all, because they are intire; so if the estate of the disseisor, or his lessee for life be confirmed for an houre, yet all is confirmed.

Cases of Customes.

Snellings Case. 37. Eliz. Com'. Banco. fol. 82.

S. Brings debt upon an obligation against an Administrator, who pleads there is a custome in L. that an Administrator shall pay debts upon contract to a Citizen, as well as upon obligation, and that I. S. upon a contract had recovered; and good, 1. Re. fol. Although that debt is given against an Administrator by the Statute of 31. E. 3. yet because they

216 *The Case of Market-overt. Lib. 5.*

were charged as Executors before, so that onely the name is changed, the custome generally alledged is good. 2. The ordinary by taking the goods was chargeable at the Common Law. 3. This Custome bindeth strangers.

The Case of Market-overt, 38. Eliz. fol. 83.

SHoppes in L. are Marketts overt for things to be sold there by the trade of the owner, therefore if plate be sold there in a Scriveners shop, the property is not altered, otherwise in a Gold-smiths-shop, if he who passeth in the street may see it. *Nota*, the reason of this case extends to all Markets overt in *England*.

Perimans Case. 41. Eliz. Com. Banco fol. 84.

IT is a good Custome of a Mannor that all sales of Lands within that Mannor be presented at the Court of the Mannor. *Obj.* What remedy if the Steward will not except the presentment. *Resp.* What remedy if the Clerke will not inrolle a deed of Bargaine and sale, and therefore *Caveat Emptor*. 2. *Obj.* That Interest is by the feoffment vested in the feoffee, which shall not be devested by the Custome. *Resp.* That livery was ordained to give notice, and a Custome which addeth more solemnity, and notice is good.

Sir Henry Knivets Case. 38. Eliz. Banco Regis, fo. 85.

Tenant for life, the remainder in fee, leaseth for yeares, the Termor is ousted, the disseisor leaseth for yeares, his lessee sowes the land, tenant for life dyes, he in the remainder enters, I.S. takes the
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Corne, he in remainder brings Trespas. The right of the Corne is not in the Plaintiff or Defendant; but in the Lessee for yeares of Lessee for Life, but the Lessee of the disseisor had right against the Plaintiff by reason of the possession: and for that if he had pleaded that he had entred to take the Corne, this had been good, but because he pleaded *Non culp.* the Plaintiff had judgement for the Entry, and was barred for the residue.

Penrins Case, 38. Eliz. Banco Regis fol. 85.

W. P. Brings a *Quod ei deforceat* in nature of a Writ of Right in Wales, and after the mise joyned is nonsure, Judgement finall is given, he brings the like Writ, and the first Judgement is pleaded in barre, the demandant demurres, and adjudged against him, and he brings Error. 1. Although by the Statute of 12. E. 1. Triall of Right in Wales shall be by Common Jury, yet Judgement finall shall be given. 2. Erroneous Judgement finall in right shall binde untill it be reversed. 3. Judgement finall shall not be given upon default of the Tenant in a Writ, but a *Petit cape* shall issue, for peradventure he may save his default.

Cases of Executions.

Blumfelds Case, in banco le roy. 39. Eliz. fo. 86.

TWo men were bound joyntly and severally in an Obligation, the one was sued, condemned, and taken in Execution, and after, the other was sued, condemned, and taken in Execution, and after, the first escaped, and the other brought an *Audita quare la;*

la; and although the Plaintiffe might have his Action against the Sheriffe upon the escape, yet untill he be satisfied indeed, the other cannot have his *Audita querela*, for if the defendant be sued by one Writ or severall proces, although the entry be, *Quod unica fiat executio*. This is to be understood, of one Execution with satisfaction, for he may have three bodies in Execution. *In communi banco inter Lynacre & Rodes case, Hil. 33. El.* It was adjudged, that notwithstanding the Conusor in a Statute Staple was taken and escaped, yet his goods and lands upon the same Statute, may be extended, for the escape, and the action which the Plaintiffe might have against the Sheriffe, is not a satisfaction of the debt. And if so the Conusor be taken and dye in execution, the Conusee shall have execution of his goods and lands. And it was adjudged, *24. E. int. Joanes & Williams*, that where two men were condemned in a Debt, and the one taken and dyed in execution, yet the taking of the other was lawfull, and then it was Resolved, *Per. tot. Cur.* that if a defendant dye in execution, yet the Plaintiffe may have a new execution by *Elegit*, or *Fieri facias*, &c.

The Execution of the body is an execution, but not a satisfaction, as appeareth in *4. H. 7, 8.* and *32. H. 6. 47.* In *Hillaries Case* adjudged, but a gage for the Debt, for the words of the Writ are, *Capias I. S. Ita quod habeas corpus ejus coram Justic. nostris, &c. ad satisfaciendum G. L. de debito & damnis, &c.* and so his body is taken to the intent he should satisfie, and when the Defendant hath paid the money, he shall be discharged out of Prison.

Garnons Case, 40. Eliz. fo. 88.

L Arton recovered against Walwyn, in an Action of Debt, and Out-lawed the defendant after judgement,

ment, and sued a *Cap. Utlag.* and delivered the same to *Garnon* the Sheriffe, who did take the Parry and before the returne of the Writt, the Defendant escaped: and thus it was Resolved, that if one at the Common Law have judgement in an Action of Debt, and after Judgement Out-law the Defendant, then the Plaintiffe is at the end of the Suite, for any pro-
cesse to be sued in his name. Yet if the Defendant be taken by *Utlary*, at the Suite of the King, no *La-ches* being in the Plaintiffe, in continuance of his Processe, he shall be in Execution for the Plainriffe, if he will, for reason requireth, that if the King shall have benefit by the Suite of the parry. So the Plain-
tiffe shall have benefit by the Suite of the King, if judgement in error be affirmed within the yeare, a *Ca-pias* or *Fieri facias*, lyeth without any *Scire facias*, although in another Court.

Frosts Case, in communi banco, 41. Eliz. fo. 89.

Frost recovered Debt and damages against B. who was Out-lawed after judgement, and a *Cap. Utlagatum*, delivered to the Sheriffe of London, *Laborne* a Serjeant arrested the said B. in *Fleet street*, *Ad re-spondendum*, A. *Laborne* kept B. in his House, and then Frost came to *Laborne* with the Sheriffs Warrant, to Arrest B. upon the said *Cap. Utlagatum*, the which to doe, *Laborne* refused, and afterward's the Sheriffe suffered the said B. to goe at large, and upon this mat-er, Frost brought his Action upon the case a-
gainst the Sheriffe, and supposed that the Sheriffe did Arrest the said B. by vertue of the said *Cap. Utlagatum*, and that he suffered him to goe at large, and the Defendant pleaded, *Non permisit eum ire ad lat-gum*. The Jurie found all the said speciall matter, and judgement was given for the Plaintiffe. For,
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first it was resolved, That when a man is in custody of the Sheriffe by Procelle of the Law, and after another Writ is delivered unto him to apprehend the body of him who is in his custody, immediately he is in his custody by force of the second Writ, by judgement of Law although he make no actuall arrest of him, for to what purpose should he Arrest the party that is already in his custody, *Et Lex non precipit inutilia quia inutilis labor stultus*; and the words of the Writ are; not onely *capias*, &c. but also *Salvo custodias*, &c. *Ita quod habeas corpus coram*, &c. and so he ought safely to keep him, *vide 7. H. 4. 30.* And the Defendant ought not to be discharged, untill he had found surety to satisfie the Plaintiffe by *5. E. 3. cap. 12.*

Hoes case, 42, Eliz. fol. 89. In the Exchequer.

EXecution of a Writ of Execution, as well at the Suite of a common person, as at the Kings suite, is good without returne of the Writ, for if a man be Arrested upon a *cap. ad satisfaciendum*, the Execution is good although the Sheriffe do not returne the Writ, and so in all Writs of Execution, where the Sheriffe doth onely execute the same as *cap. ad satisfaciendum. habere fac seisinam vel. possessionem Fieri Facias Liberat.* If the execution be duly made, it is good, but if *cap.* in Procelle be not returned, the arrest is not lawfull, for there the intent of the Writ is, to bring the party to answer the Plaintiffe, and in case of an *Elegit*, for there, the extent is to be made by Inquest, and not by the Sheriffe onely; and the Writ ought to be returned, otherwise it is of none effect. In this case it was resolved, that when one hath a power of revocation, yet if he suffer any thing to be lawfully executed, as touching that, he cannot make

make any revocation : as if a man make a Letter of Attourney to another, to do any thing, before execution he may revoke it, but after Execution Lawfully done it cannot be revoked ; if one to whom another is indebted, be Outlawed, and he that oweth the money, payeth it to the King, and the Outlary is after reversed, yet the Creditor shall recover his Debt against the party, if the goods of an Out-lawed person be sold by the Sheriffe upon a *cap. Utlagat'* and after the Outlary is reversed by Error, the Defendant shall have restitution of his goods, for the Sheriffe or Escheator, is not compellable to sell the goods, but he may keepe them, to the use of the King, agreeing to the Booke. 20. *Elix. Dyer.* 363. but if a Sheriffe by vertue of a *Fieri Facias*, sell the goods, and after the judgement be reversed by error, the Defendant shall not have restitution of the goods, but the value of them, for which they were sould. And the reason is, the Sheriffe is compellable to Levie the Debt of the goods of the Defendant, and therefore great reason that the Sale should stand.

Semaynes case, 2. Jac. fo. 91. Banco Regis.

THAT the house of every man is to him as his Castle, and Fortresse, as well for his defence against injuries and violence, as for his repose ; that if a man kill another in his defence or per-misfortune, without any intent, yet, it is felony, and he should loose his goods and Chattells, for the great regard that the Law hath to the life of a man. But if Theeves come to the house of a man to rob or murder, and the owner or his servants kill any of the Theeves, in defence of him or his House, this is not felony, neither shall he loose any thing ; any man
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may assemble his Neighbours or friends to Guard his House against violence, but he may not assemble them to goe with him to the Market or abroad, to safe-guard him against violence, and the reason of all this is, *Domus sua cuiq; est iurissimum refugium*. It is resolved, that when any house is recovered by any reall action, or by *Ejectione firme*, the Sheriffe may breake the house, and deliver seisin or possession. It was also resolved, that in all cases where the King is Party, the Sheriffe may breake the House (if the Doores be shut) and make Execution of his Writ, but before he breake the House, he ought to signifie the cause of his comming, and make request to have the Doores opened, *West, 1 Cap. 17.* which Act is but an affirmance of the Common Law, but if the Officer break the house when he might have the Doores opened, he is a Trespassor, *41. Ass. pl. 33.* For felony, or suspicion of Felony, the Officer may breake open the Doore; in all cases where the Door is open, the Sheriffe may enter, and make Execution of his writ either for body or goods, at the suite of a sub ect, or the Lord may distraine for his rent. But it was Resolved, that the Sheriffe at the suite of a common person (upon request made to open the Doores and denyall thereof) ought not to breake open the Doore or the House, to execute any proecesse at the Suite of any Subject, or to execute a *Fieri facias*, being a writ of Execution, but he is a Trespassor, yet if he doe Execution in the House, it is good in the Law, being done, it was also Resolved, that the house of a man is not a Castle or defence for any other person but for the owner, his Family and goods, and not to protect another, that flyeth into the same, or the goods of another, for then the Sheriffe upon request and denyall, may breake the house, and doe Execution. And this is proved by the Statute of *West.*

West. 1. ca 17. whereby it is declared, that the Sherisse may breake the House or the Castle to make replevin, when the goods of another that he hath destrayned, are conveyed away, to prevent the owner, but in this case the Sherisse must demand the goods first.

Barwicks Case, 39. Eliz. in Exchequer. fol. 93.

THE Queene 28. Die Julij, Anno. 26. demised the mannor of Sutton, to Humfrey Barwick tenend. *sibi a die confessionis.* It was resolved that the same 28. day of July, is excluded, and the demise began the 29. of July. It was also Resolved, that an estate of freehold cannot commence *In futuro*, but ought to take effect presently in Possession, Reversion, or Remainder. A Lease for yeares may commence in future, but not a Lease for life, and the reason is, for that a Lease for yeares may be made without livery and seisin, but an estate of Freehold may not be made without livery, either in Deed or in Law, and therefore when a man maketh a Lease for Life, to commence at a day to come, he cannot make a present Livery to a future estate, and therefore in this case nothing passeth, and it is all one whether it commencerth at a day to come, or yeares to come, for the distance of the times doth not make alteration in this case, but in the case of two joynt Lessees, the Livery made to one is good in the name of both, for they have an interest in the Land, before their entry, and livery to one in the name of both, maketh an actuall possession in both, which is sufficient to support the remainder to a third person in Fee, *Vide Claytons Case*, in the Fifth Booke, Lycense to occupy Land for one yeare, is a Lease for one yeare.

5. H. 7. 4. in consideration of a former demise to
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be surrendred, which was false and void, is a void consideration, as to the Queen.

Goodalls case. 40. El. Banco Regis fo. 95.

Conditions for payment of money touching inheritance, ought to be truly performed, and not covinous, if they concerne a third person. The Law doth not finde an assignee in Law where there is an assigne in fact. *Expressum facit cessare tacitum*; affirmed in the Exchequer-Chamber upon Error there brought.

Countesse of Northumberland's case, 40. El. Communi banco, fol. 97.

Fliton and the Countesse of Northumberland his wife, Sir Thomas Cicill, Knight, and Dorothea his wife, William Cornewalleys, and Lucy his wife, and the Lady Davers, Daughters and Heires of the Lord Latimer, brought a (*Quare impedit*) against Hall, who pleaded a release of William Cornewalleys, *pendente breve*, and it was adjudged that this should but goe in Barre onely against William Cornewalleys and his wife, and the Writ should stand for others, and all shall vest in the others, because intire, and in the realty, presentment of the Lessor and Lessee is not double, for the Lessor's onely traversable.

Buries case. 40. El. in communi banco, fo. 98.

Between VVhebfster and Burie in *Ejectione firma*, a speciall verdict was given upon divorce betweene Burie and his wife, *causa frigiditatis*, and that his wife for three yeare, after the marriage, *Remansit virgo intacta propter perpetuam impotentiam generationis in vi-*

ro, & quod vir fuit inaptus ad generandum; and in this speciall verdict, all the examinations of the Witnesses, upon which the Judge in the spirituall Court was moved to give his sentence, by which the perpetuall disability of Bury ad generandum was manifest, were read; and by which it was pretended, that the issue which he had by a second wife was illegitimate, and this was the doubt of the Jury. And it was adjudged, that the issue of the second wife was lawfull, for it is cleare that by the Divorce (*causa frigiditatis*) the marriage is dissolved *a vinculo matrimonij*, and by consequence, either of them might marry after, then admitting that the second marriage was avoydable, yet it remained a marriage untill it was dissolved, and by consequence, the issue that is borne during the coverture, (if no divorce be in the life of the parties) is lawfull, *Et homo potest esse habilis & inhabilis diversis temporibus*, and Judgement affirmed in Error.

Flowers Case. 41. El. Banco Regis. fol. 99.

AN indictment of perjury upon 5. *El.* for giving false evidence to the great Inquest, is not within the Statute, for it must be in matter depending in suite by Bill, Writ, action, or information; vide le Statute. *Plus peccat author quam actor.*

Rookes Case. 40. Eliz. fol. 99.

THAT the Commissioners in the Commission of Sewers ought to tax all which are in damage, or in danger of damage, for non-repaire of the Bancks, and not onely him, which hath the Land next adjoyning to the River. The Commission is grounded upon the Statute 6. *H. 6. cap. 5.* for if the Law were otherwise, great inconvenience might follow, for it might

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be, that the rage and force of the water might be such, that the value of the Land adjoyning would not serve to amend the Bancks, and therefore the Statute would have all in perill, and which take commoditie by the making of the Bancks to be contributory; for *qui sentit commodum sentire debet & onus & ipsæ leges cupiunt, ut jure regantur.*

And notwithstanding by the words of the Commission, authoritie is given to the Commissioners, to doe according to their discretions; yet their proceedings ought to be limited and bounded with the rule of the Law, and reason. For discretion is a knowledge, or understanding to discern betweene right and fallshood, truth and wrong, shadowes and substances equity and colourable glosses and pretences, and not to doe according to their wills and private affection; For a learned Man saith; *Talis discretio discretionem confundit.*

Penruddocks Case. 40. Eliz. fol. 100.

IN a quod permittat betweene Clarke assignee of Thomas Chichley, plaintiffe, and Ed: Penruddock and Mary his wife defendants, assignee of one John Cock, for that Cock 20. 8bris 10. Maria erected upon his freehold a house in St. Johns streere so neere the Curte-lage of an house of Thomas Chichley, that *Domus illa super pendet, Anglice, doth overhang magnam partem videlicet 3. pedes curtilagij the plaintiffe, sic quod aquæ pluviales de eadem domo decedentes solum ejusdem curtilagij conterunt & magnopere ac indies magis magisque consumunt & Devastant, ac ea ratione curtilag' præd. quolibet pluviale tempore humectat'. & inundat. existit, quod prædictus Henricus Clarke inhabitans in eodem Messuagio nullum proficuum seu easiamantum de eodem curtilagio percipere possit, ad pocumentum liberi tenuenti præd'. &c.* And it was resolved,

solved, that the distilling of the waters in the time of the Feoffee or assignee is a new wrong; and this Writ lyeth after request of amendment, but not before, but it lyeth against him that did the wrong without request, and the action good, &c.

Windsors Case. 41. Eliz. fol. 102.

IN a *quare impedit* by Windsor against the Archbishop of Canterbury for the Church of *Buscott* in the County of *Bark*: It was adjudged that if two have title to present by turne, and the one present, who is admitted, instituted, and inducted, and afterwards is deprived for Crime, Heresie, &c. yet that Patron should not present againe, but that shall serve for his turne. So likewise if he present a meere *Laius*, which was admitted, instituted, and inducted, although it be declared by sentence, that he was incapable, and therefore voyd *ab initio*, yet because the Church was full untill the sentence declaratory be pronounced, yet that shall serve for his Turne. But when the admission and institution are meerely voyd, then that shall not serve for one Turne, as if a presentee be once admitted, instituted, and inducted, but hath not subscribed to the Articles, &c. according to the Statute of 13. *El.* by which in this case the admission, institution, and induction are voyde, 13. *El. Dier pl. ult. acc.*

Hungatts case. 43. El. Com. Banco. fol. 103.

Hungatt brought an action of debt upon an Obligation against *Mese* and *Smith*, the condition was to performe an award between the plainriffe on the one partie, and the defendants on the other; *Ita quod arbitrium præd. fiat & deliberetur utrique partium præd.*

prad. before such a day, the arbitrament before the day was delivered to the Plaintiffe, and to *Mese*, but not to *Smith*, Judgement was given against the Plaintiffe. It was resolved, that if two be of one partie, and two of another, and the words are, *Ita quod deliber. utriq; partium*, That the delivery of the arbitrament to one of the one part, and another of the other partie is not sufficient; For the partie is to be intended of the whole partie, for one is as well within the penaltrie and danger of the Obligation as the other; and *utrq;* is taken sometime *Discreutive*, sometimes *Collective*, *Secundum subjectam materiam*; but here it is taken *Collective*.

Bakers case. 42. Eliz. fol. 104.

IF a plaintiffe in evidence shew any matter in writing or record, or any sentence in the Ecclesiasticall Court, whereupon Law doth arise, and the defendant offer to demurre in Law upon the same, the Plaintiffe cannot refuse to joyne, or wave his evidence, and so on the other partie, and the reason is for that matter in Law, shall not be put in the mouth of Laymen; but the King in this case is at libertie.

Boulstons case. 40. El. in communi Banco. fol. 104.

IT was adjudged that if a man make Cony-borrowes in his owne Land, and the Conies encrease to so great a number, that they destroy his Neighbours ground adjoyning; The Neighbours may not have an action of the case; for presently when the Conies come into his Neighbours ground hee may kill them, because they are *fera natura*. And in this case it was resolved, that none may newly erect a Dove-house, but the Lord of a Mannor, and if any doe,

doe, he may be punished in the Leete; But no action of the case lyeth for any particular man, for the infinitnesse of actions that might be brought. And of this opinion touching the new erecting of a Dovecote, was Sir Roger Manwood, chiefe Baron, and the Barons of the Exchequer in the Exchequer Chamber,

Aldens case. 43. Eliz. Com. Banco. fol. 105.

Auncient demise is a good plea in an *Ejectione firma*, although it is not in trespass, because by intendment the freehold may come in debate, and the interest of the Land is bound; auncient demesne is extendable upon a Statute by *Elegit*, but in an assise by tenant by *Elegit*; auncient demesne is a good plea 22. Aff. Pl. 45.

Sir Henry Constables case. 43. El. in banco le roy. fo. 106.

Nothing shall be said *Wreccum maris*, but such goods onely, which are cast or left upon the Land by the Sea: *Flotsam maris*, is when a Ship is drowned, or otherwise perish, and the goods flore upon the Sea; *Jetsam maris*, is when a Ship is in perill of drowning, and for disburthening thereof, the goods are cast into the Sea, and after notwithstanding the Ship perish. *Lagan vel potius Ligan*, is when the goods so cast out of the Ship, and the Ship perish, and such goods are so ponderous that they sinke to the bottome, and the mariners to the intent to finde them, binde thereunto a Boy or a Corke, or other such thing to finde them againe; *Et dicitur Ligan a Ligando*, and none of these words which are called *Flotsam*, *Jetsam*, or *Ligan*, are called wreck, so long as they remaine in or upon the Sea; but if any

of them be cast upon the Land by the Sea, then it is said to be wreck, and by the Statute 15. R. 2. ca. 3. the Lord Admirall shall not have conuſance or jurisdiction of wreck of Sea ; but of the other three he hath ; for wreck is when the goods are cast upon the Land, and so within some County, whereof the Common Law may take conuſance ; But the other three are upon the Sea, *Magis proprie dici poterit wreccum, si Navis frangatur & ex qua nullus vivus evasit, & maxime si dominus rerum submersus fuerit, & quicquid inde ad terram venerit erit domini regis* ; wreck may by prescription belong to the Lord of a Mannor. It was resolved also, that the soyle upon which the Sea doth flow and reflow, *scil.* Between the high water marke, and the low water marke, may be parcell of the Mannor of a Subject. 16. *El. Dier.* And it was resolved, that when the Sea doth flow, *ad plenitudinem maris*, the high Admirall shall have jurisdiction of every thing done upon the water, between the high water marke, and the low water marke, as felony, &c. No prooffe is allowable by the Law, but the verdict of twelve men ; part of the goods were wreck, and part not, & damage assessed intirely, *ergo* Judgement given for the defendant. The King shall have *fisham* upon the Sea, because within the ligeance of the King.

Foxleys case. 43. *El. Banco Regis.* fol. 109.

IT was resolved, if a Felon steale any goods, and leave them in a Mannor, or Towne, or in his house, or in the house of another, or hide them in the earth, or any other secret place, and afterwards fly, these goods are not forfeited, nor waive goods in the Law, for waive is where a felon in pursuite, waveth or leaveth the goods, or for seare to be taken thinking that pursuite was or is made, having the goods with him in
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his possession, flyeth away and leaveth the goods. In these cases the goods shall be said waved in Law; But if he had not the goods with him, when he did fly being pursued, or for feare of being apprehended, the goods are not waved, nor forfeited, but the owner may take them againe when he will, without any fresh suite. But if the Felon in his flying wave them, the goods are forfeited by the Common Law; If the Felon upon fresh suite be not attaint, at the suite of the owner of the goods. And the reason that wave is given to the King, is for default of the owner, that he doth not make fresh suite after, for to apprehend the Felon. Wherefore the Law doth impose the penaltie on the owner.

Bona fugitivorum are the proper goods of him that flyeth away for felony; But it is to be observed, that if a man fly for felony, his goods are not forfeited, untill they be found by indictment or otherwise lawfully found of record upon his acquittall, that he fled for the felony, they cannot be claimed by prescription, because the things forfeited by matter of record, cannot be claimed by prescription.

But waife, stray, treasure trove, wreck of the Sea, &c. which things may be gained by usage without matter of record, there a man may prescribe to have *Bona & catalla felonum*: in some cases *Bona & catalla felonum* shall be forfeited by conviction, and sometimes without conviction, but alwayes when any forfeiture is of any goods of felons, it ought to appeare of record, and that is the cause that such goods cannot be claimed by prescription.

Deodanda, are goods which cause the death of a man by misadventure, and are not forfeited, untill they be found of record, & therefore cannot be claimed by prescription, & the Jury that presents or finds the death, ought to finde and apprise the *Deodandum*

also, *omnia que movent ad mortem sunt deodanda*; Bona & catalla in exigendo positorum, are when any be appealed or indicted of felony, and he withdraw or absent himselfe, for so long time as an exigent is awarded against him for his absenting (which is a flying away in Law) he shall forfeite all his goods and chattells which he had at the time of the exigent, and after be found not guiltie, 22. *Lib. Ass.* Looke the Statute 21. *H. 8. ca. 11.* concerning goods waved, and for restitution, &c.

Mallaryes case. 43. Eliz. fol. 111.

REndring rent to one and his heires, and to one or his heires, are all one; But a Feoffement *tenendum* to one or his heires, is but during the life of the Feoffee; *Nemo potest plus juris in alium transferre quam ipse habet*: this case consisteth much upon atturnements. *vide le case.*

Wades case. 43. Eliz. in Communi Banco. fo. 114.

A Man was bound to pay 250. *li. Legal. monet. Anglia,* on a day certaine, the last time of the day, that so much money can be numbred is the best time, so that it be before the setting of the Sunne, and the most convenient time by Law, that both parties may meete: five shillings in Spanish money, and two pistolets in gold were tendered. It was resolved, that the Spanish silver was lawfull money of England by Proclamation *in tempore Philippi & Maris*, and so French Crownes; for the King by his Prerogative and Proclamation may make any forreigne coyne lawfull money of England: That if a man tender more then he is bound to pay, it is good, *Omne majus continet in se minus*, That the tendring of 250. *li.* in bags without

without shewing or numbering the same is good tender, if the truth be that there was so much, *vide Winters case*, if there be any counterfeit money in the same, yet if the partie then accept the same, he cannot compell the partie to change it, or if it be a rent, or for non-payment a reentree, yet the once acceptance is good, and the lessor may not reenter.

Foliambes Case. 43. Eliz. fo. 115.

IN a writ of *Estrepement*, the Sheriffe may resist them that will make waft, or cut downe Trees, and if he cannot otherwise, he may Imprison them, and may make warrants to others, and he may take *Posse comitatus* for his aide. A writ of *Estrepement* lyeth in an Action of waft, as well before judgement as after.

Olands Case, 44. Eliz. Banco regis. fo. 116.

A Feme Copy-holder *Durante viduitate*, sowes the Land, and taketh Husband, the Lord shall have the Corne, for although her estate was incertaine, yet it was determined by her own act; so if Lessee at will sowe the Land, and determine the will, but if Baron and Feme are Lessees during the coverture, and the Baron sowe the Land, and they are after Divorced, *Causa præcontractus*, the Baron shall have the Emblements, because this is the Act of the Court.

Pynells Case, 44. Eliz. fo. 117. com. banco.

PYnnell brought an Action of Debt upon an Obligation against Cole, of 16. *l.* for payment of 8. *l.* 10. *s.* on the 11. of Nov. 1600. The Defendant plead-

pleaded, that at the instance of the Plaintiffe before the said day he paid him 5. l. 10. s. and it was resolved by all the Court, that the payment of a lesser summe in satisfaction of a greater summe, cannot be satisfaction for all, so that by no possibility a meener summe may satisfie the Plaintiffe of a greater; but the Gift of an Horse, Cowe, Robe, &c. in satisfaction is good.

But in this case it was resolved, That the payment of a parcell, and acceptance thereof before the day, in satisfaction of all, is a good satisfaction, in respect of the circumstance of time; for peradventure, parcell of that before the day, may be more beneficiall unto him then the whole summe of money at the day, and the value of satisfaction is not materiall, for if I be bound to pay you 10. l. at *Westminster*, and you request me to pay 5. l. at *Yorke*, and you will accept the same in full satisfaction of the 10. l. this is a good satisfaction in respect of the place; but in this case, the Plaintiffe had judgement for the insufficient pleading, for he did not pleade that hee had payd 5. l. 10. s. in full satisfaction, (as by Law he ought) but pleaded the payment of part generally, and the Plaintiffe accepted the same in full satisfaction, and alwayes the manner of the tender, and of the payment shall be directed by him that maketh the tender and payment, and not by him that accepteth it,

Edriches Case, I. Jacobi. com. banco. fo. 118.

A Rent charge is granted to B. for the life of C. the Grantor leaseth for life to D. the remainder in Fee to E. C. and D. dyes, B. distraines E. for all arreares, this is good by the Statute of 32. H. 8. cap. 37.

Whe'pdales

Whelpdales Case, 2. Jacobi. com. banco. fo. 119.

IN Debt brought against one joynt Obligor the Defendant pleads *Non est factum*, adjudged for the Plaintiffe.

1. Resolved, he may pleade in abatement of the Writ, but not *Non est factum*, for every one is obliged in the intirety, therefore if Debt be brought against both, and one is outlawed, the other who appears shall be charged with all.

2. If a Deede be avoidable by plea, he shall not pleade, *Non est factum*.

3. If a Deed be made voyd by Statute, he shall not plead *Non est factum*, but shall avoide it by plea, but if a deed by matter *Ex post facto*, become not his deed, he plead *Non est factum*, as if one deliver a deed to deliver over to I. S. who refuseth, &c.

Longs Case, 2. Jacobi banco regis. fo. 120.

EXception to the Inditement of Murder, the Inditement was taken, *Infra libertatem villa de C.* and C. where the Torte is done, is not said to be within the Liberty. Response, that to Inditements certainty to a certaine intent in generall sufficeth, and not to every particular intent, for that is, *Nimia subtilitas*, and it shall be intended, that the *Ville* of C. is within the Liberty of C. the Indictment is, *Quod dedit vulnus super anteriorem partem corporis subter Mammillam*, where it should be *Mammillam*. Resolved, that false Latine shall not quash an Indictment, if the word be sensible, and these two words are good Latine, also this is superfluous, for *Super anteriorem partem corporis*, is sufficient, and shall be intended the Trunke betwixt the Neck and Thighs. 3. *Vulnus*, where

where it should be *Plaga*, over-ruled because *Synonima*. 4. *Le depth* is not shewed, it was said, that it did penetrate all his body, whereby it appeareth that it was mortall. 5. It is said, that the wound did penetrate his body, and not the Bulle, this is significant enough. 6. *Percussit* wanteth, and for this cause the Indictment was quashed, for in all cases of death this ought to be, except in case of poysoning, and for this last error the Outlary was reversed, and H. D. was discharged.

Saffins Case, 3. *Jacob*. fo. 123. com. banco.

A Man maketh a Lease for yeares to commence after the end or determination of a former Lease *In esse*. The first Lease endeth, the second Lessee doth not enter, but he in reversion entereth, and maketh a Feoffement, and levyeth a fine with Proclamations, and five yeares passe without entry, or claime of the second Lessee. If this fine be a Barre, was the Question, and it was resolved to be a Barre, for the Statute of 4. *H. 7. c. 24.* speakes of interest, and a Lease for yeares is an interest within the Statute, so of tenant by *Elegit*, &c.

De Libellis famosis. 3. *Jac.* fo. 125.

A Libell may be made as well against a private man as against a Magistrate, *Non refert*, whither the Libell be true, or whither the party be of good fame, or ill fame, for it inciteth all the same Family, Kindred, or Society to revenge, and so tendeth by consequence to the effusion of blood. It was resolved in the Starre-Chamber, 44. *Eliz.* *Hallywoods Case*, that if any finde a Libell, and would preserve himselfe out of danger, if it be against a private man, the finder

finder may either burne it, or presently deliver it to a Magistrate, but if it concerne a Magistrate or publick person, then he ought to give it to a Magistrate. A Libell may be as well by words, *Verbis aut cantilenis*, as Writings, and by Pictures or Ignominious Signes, as Gallowes, &c. The Punishment is by Indictment, as in the Starre-Chamber.

Palmers Case, 8. Jac. fo. 126. banco regis.

THE Gardian in Chivalry shall have the single value of the Marriage of the Heire without tender, otherwise the Heire may defeat the Lord by Marriage, or goe beyond the Sea, and so prevent the Lord of any tender, if it were requisite.

Caudreyes Case. 33. Eliz. in Trespasse.

THE Jury found the Statute of 1. *Eliz. cap. 1.* and *cap. 2.* and that the Plaintiffe was deprived for Preaching against the Booke of Common Prayer; by the Bishop of London, *una cum assensu*, &c.

Resolv. 1. The deprivation was good for the first offence, because the Act of 1. *Eliz.* for uniformity of Common Prayer doth not abrogate 1. *Eliz.* for Ecclesiasticall Jurisdiction without negative words, and by an expresse proviso the Jurisdiction of the Bishop is saved.

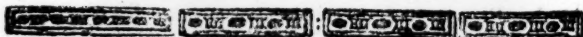
Resolv. 2. That sentence given by the Bishop by assent of his Collegues, ought to be allowed by our Law.

Resolv. 3. The Commissioners shall be intended Subjects borne, &c. *Stabimus præsumptioni*, &c. Also it is found that the King authorized them, *Secundum formam Statuti*.

Resolv. 4. The Act of 1. *Eliz.* for Ecclesiasticall
Juris.

Jurisdiction was onely declaratory, for the King being an absolute Monarch, and head of the body politick, had plenary power to minister justice to his Subjects in Causes Ecclesiasticall and temporall. See *Circumspecte agatis*. 12. E. 1. and *Articuli Cleri*. 9. E. 2. *Reges sacro oleo uncti sunt spiritualis jurisdictionis capaces*. See there diverse judgements, Lawes, and Acts of Parliament, cited to prove the Kings supremacy in Causes Ecclesiasticall.

The End of the Fifth Book.



THE





THE SIXTH BOOK.

Where Services intire shall be Apportioned.

*Bruertons Case, 36. Eliz. In the Court of Wards.
Fol. I.*



ORD and Tenant of three Acres, by Homage, Fealty, a Hawke and Suite of Court, the Tenant makes a Feoffement of one Acre, the Feoffee by the common Law shall hold by all intire services, annuall and casuall, and the Statute of *Quia emptores Terrarum*, doth not extend to intire services, but by the Statute of *Marlebr. c. 9.* the Feoffees shall make but one Suite, and he who doth it shall have Contribution against the others, if they are severally infeoffed, otherwise if joyntly.

2. Intire services shall be multiplyed by the Act of the Tenant, and extinct by the Act of the Lord, as if he purchase part.

3. By Act of the Lord intire service for his private benefit is extinct, otherwise if it be for the publick good, for works of Charity, Devotion, or Administration of Justice.

4. If part comes to the Lord by act in Law, yet the

the intire service remaines, except in Case where Contribution is to be made, for the Land shall not contrib ute.

5. If part comes to the Lord by Act in Law, and of himselfe as by recovery in a Cessavit, all the intire services are gone.

Where the Paroll shall demurre for the nonage of the Demandant, and where the Tenant shall have his Age.

Markals Case, 35. Eliz. com. banco. fo. 3.

IN a Formedon in the remainder by an Infant of a remainder limited to his Father, and his heires the Tenant cannot pray, that the Paroll may demur, but in a Formedon in the reverer he may: In actions auncestrell, the Tenant may pray that the parol may demurre, because a right onely discends to the Infant, and the Law will not suffer him to sue, for feare that he may loose for want of understanding, but in possessory Actions he cannot, because then every one will put Infants out of possession, and it would be mischievous if they should not regain their possession untill full age: So it is in all Writs where the cause of action happens in the time of the Infant. And as to Actions auncestrell, they are of two sorts. Droiturell and possessory, the first is where a right onely discends from the Auncestor, and the Infant ought to lay the explees in the Auncestor, and there the Tenant (without plea pleaded) may pray that the paroll may demurre but if the Auncestor were never in possession (as in this case he was not) and the Infant himselfe is the first in whom

whom it vests there (without plea pleaded) hee shall not pray that the Parol may demurre: but if a right discend from an auncester who was in possession, although the Action doth not discend, the Tenant may pray that the parol may demur, as if *Non compos mentis* alien and dye: In actions auncestrell possessory, the parol shall not demur without plea: but if at the common Law the Tenant had pleaded a feoffment of the auncestor, then he may pray, &c. by the Statute of *Gloucester*, cap. 2. aideth that in the Writs of *Cosinage*, *Besaiel*, and *Aiel*, but this extends not to other actions, in a *Formedon*, in the descender, where an Infant recovers, but a limited estate the Paroll shall not demur without plea, in an *Affize*, or *affize of Mordauncester*, the Paroll shall not demur because the Jury is to appeare the first day, and try all things.

The Statute of *VWestm.* 1 cap. 46. Age is taken away in entry upon disseisin, where fresh suite is made, but an Infant shall have his age in all reall Actions, where he is in by discent, and the Action is not founded upon his owne wrong, except in *Nuper obiit*, and *Partitione facienda*, where both are in possession or attaint, for the mischief of the death of the Petty Jury. The Statute of *VWestm.* 2. cap. 40. Ousteth the age of the vouchee in *cuj*, *in vita*, and *Sur cuj. in vita*, although that the Tenant will answer, if the parol ought to demur, yet the Court ought to award that the paroll shall demur.

Sir John Molyns Case, 40. *Eliz.* in *Scaccar*, fol. 5.

King Edward the third, Lord Abbot of *VWestminster*, Mesne, and C. Tenant. C. is attainted of Treason, the King grants to Sir Jo. *Mo Tenendum de nobis & aliis capitalibus dominis feodi illius per servitia*,
K S.C.

&c. the Mesnalty is revived. *Obj.* 1. That the tenure shall be *Per servitia inde debita*, at which time no service was due to the Mesne. 2. An expresse tenure of the King is limited, and it cannot be immediately holden but of one. To the first it was answered, that there are sufficient words to renew the Mesnalty, because the intention of the King, appeares to be so, and it is reasonable, that the Mesne who offended not should not suffer losse. 2. It shall be holden immediately of the Abbot, and mediarly of the King.

Whealers Case, 43. Eliz. in Scaccario, fo. 6.

THE King grants Land *Tenendum* by a Rose, *Pro omnibus serviciis*, this is Socage in chiefe, and the tenure shall be by fealty and a Rose, and (*Pro omnibus*) is to be intended of other services which the Law doth not imply.

Resolutions and Diversities when a Barre in one action shall be a Barre in another.

Ferrers Case, 41. Eliz. Com. Banco. fol. 7.

IF one be Barred by plea to the Writt, he may have the same Writt againe; if by plea to the action of the Writt he may have his right action: If the plea be to the action, and he be Barred by Judgment upon demurrer, confession or verdict, in personall action it is a Barre for ever, and in reall actions he is put to a Writt of higher nature, as Barre in assise barreth one in Entry in nature of an assise, but he may have an assize of Mortdauamester, &c. But Barre is not perpetuall if those who are barred have

have not the meere right, therefore the heire in taile who is barred shall have the same action, so of the successor of a Parson, if he doth not pray in aide of the Patron and Ordinary; He who lost by default before the Statute of *Westminster*, 2. cap. 4. was put to a Writ of Right, and if he could not have this writ, he was without remedy: In case where a Writ of Entry in the post lyeth now, no remedy was before the Statute of *Marlebridge*, cap. 29. but a Writ of right. See there divers inconveniences which insue upon the breach or alteration of the auncient and fundamentall rules of the Common Law: *Interest Reipublica ut sit finis litium.*

Where a Writ shall be brought by Journeys accompts.

Spencers Case. 45. Eliz. com. banco, fol 9.

IF a Formedon abate for undue summons, the demandant may have another by Journeys accompts.

1. *Resol.* If a Writt abate by default of the demandant himselfe, he shall not have another Writt by Journeys accompts, otherwise it is if by default of the Clerke or Sheriffe as in this case: If a Writt abate for nontenure of all, he shall not have, &c. but if a Præcipe abate for non-tenure of parcell, he shall have another, so if it abate for joynttenancy of part of the demandant he shall not have a new Writt because he had notice, otherwise it is of the part of the Tenant: And this Writt shall be alwayes betwixt the parties to the first Writt, and of the same quantity of acres: A Judiciall Writt shall never be sued by Journeys accompts, because it shall never abate for forme. 2. The second Writt is *quasi*, a continuance

ance of the first Writt, therefore all pleas which relate to the purchase of the Writt shall be pleaded from the purchase of the first Writ, and costs of the first Writ shall be recovered, 32. E. 3. Journeys accompts. 16. 15. dayes were allowed.

Gentlemans Case. 25. Eliz. concerning Judges of Courts. fol. 11.

IN the Hundred Courts the Sutors are Judges, in the Court of Pypowders, the Steward is Judge; In a Leet, the Steward is Judge: In a Court Baron, the Sutors which are by the Common Law are Judges, *Rex se&toribus Curia, &c. Vobis mandamus, &c. ad iudicium reddendum, &c. procedatis*: but in Redisseisin the Sheriffe is Judge, by the Statute of Merton, cap. 3. and in the Tourne.

Morries Case, 27. Eliz. Com. Banco. fol. 12.

IT was adjudged, that after the act of 28. H. 8. ca. 1. although joyntenants be compellable to make partition by Writ, as well as Copartners, yet they may not make partition by words, as Copartners may do by the Common Law. If two joyntenants make partition by Writ, the warranty remaineth, otherwise it is if it be by deed by consent.

Cases of Pardon, 29. Eliz. fol. 13.

BURTON Parson of Isbock in Leic. was deprived Anno 12. El. for committing Adultery, and after by the generall pardon 2. Apr. 13. El. the offence of Adultery (*inf. ali.*) was pardoned, before the 14 of February then last past. And it was said, that before the pardon, that *crimen adulterij præd. transivit in rem iudicatam,*

judicatam, and therefore the sentence should remain^c in force ; And therefore untill the sentence were reversed the deprivation was in force. But it was resolved, that *Burton* by vertue of the said pardon is become Parson againe, without any sentence declaring the said deprivation to be voyd : for by the pardon the Adultery which was the cause of the sentence is discharged, and by consequence, all that which did stand or depend upon the same foundation is also discharged, *Vide 20. El. dyer.*

A. was bound in a Statute of 20 *li.* to B. B. sued Execution, and the Lands of A. were delivered in Execution, and after B. maketh Defeasance to A. by Indenture, that if A. do pay to B. 8. *li.* at a certaine day, that then the Statute to be voyd ; And it was adjudged that although the Statute was executed, yet the Defeasance of the Statutes was sufficient in Law to defeat as well the Statute, as the Execution thereof ; For the Statute is the foundation of all, and if that be defeated, all that is builded on the same, shall be defeated also, 20. *ass. pla.* 7. Burglary was excepted out of the generall pardon of 28. *Eliz.* by that the attainder of Burglary is excepted, for the offence remaines after judgement, and is the foundation of it.

Arundells Case. 36. Eliz. Banco Regis. fol. 14.

AN indite ment of murther in King street in W. and the Visne from W. and it was vicious, for it ought to be from the most certaine place, that is the Parish, for W. being a City it shall be intended that it is greater then the Parish, and therefore a new *Venue jacias* was awarded.

Treports Case. 36. El. Banco Regis. fol. 14.

A. Tenant for life, remainder in fee to B. both by Deed indented, joyne in a Lease to *Treport*; the question was, whether the same shall be adjudged in Law, the Lease of both of them or not, And it was resolved, that it was the Lease of A. during his life, and the confirmation of B. and after the death of A. it was the Lease of B. and the confirmation of A. and because the Plaintiffe had declared of a joynt demise of A. and B. it was adjudged against the plaintiffe in an *Ejectione firmæ*. If Tenant for life, and he in remainder joyne in a Lease, rendring rent, tenant for life shall have the rent during his life.

Edens case, 37. Eliz. Banco Regis, fol. 15.

Riens passa by Letters Patents shall be tryed where the Land is, and not where the Patent beares date, for the Patent is not traversed, but the effect of the issue is, whither the Queene had the said land to the grant or not.

Colyers case, 37. Eliz. Com. Banco. fol. 16.

One deviseth to his daughter for life, and after to his brother, paying 20. s. to I. S. the brother had fee for the summe to be paid by him, for otherwise he may pay the 20. s. and die without satisfaction; but if the payment be to be made out of the profits of the Land, he shall have but for life, for there he can be at no prejudice.

Wylde's case, 41. Eliz. Banco Regis, fol. 16.

A Man deviseth Lands to the husband and the wife, and to the children of their bodies ; The question was , whether they have an estate for life , or an inheritance in taile. And it was resolved, that if they had children at the time of the Demise made , then they had but an estate for life ; But if they had no children , then they had an estate of inheritance in taile.

Sir Edward Cleeres case, 42. Eliz. fol. 17,

A Man is seized of three acres of Land holden *in capite* , and maketh a Feoffment in Fee of two of them, to the use of his wife for her life ; and after maketh a feoffment by deed of the third acres to the use of such persons , and of such estate and estates as he should limit and appoint by his last Will in writing ; And afterwards by his last Will in writing, hee Devised the said third Acre to one in Fee ; and if this Devise was good for all the third Acre, or not, or for two parts thereof, or voyd for all , was the question ; And it was adjudged, that the Devise was good ; For the Feoffor by his last Will limited the estates according to his power , reserved to him upon the Feoffment, the estates should take effect by force of the Feoffment, and the use is directed by the Will ; So as in this case the Will is onely directory ; But if he declared his Will by Writing without any reference to his authority or power , as owner of the Land , and to limit no use according to his power. In this case the Land being holden *in capite*, the Devise is good for two parts, and voyd for the third part. If a man make a Feoffment in Fee of Lands *in capite* , to

the use of his last Will, although he Devise the Land with reference to the Feoffment, yet the Will is voyd for a third part; for a Feoffment to the use of his last Will, and to the use of him, and his heires is all one.

In this case when the party had conveyed two parts to the use of his wife, by his act executed he cannot as owner of the Land devise any part of the residue by his Will, and therefore because he hath not an election, as in the case put before, whether to limit according to his power, or devise the same as owner of the Land, (for in the case at Barre as owner of the Land, (having conveyed two parts to the use of his wife,) he cannot make any Devise. The Devise of necessity must inure a limitation of the use, otherwise the Devise should be altogether voyd.

Packmans Case. 37, Eliz. banco Regis, fol. 18.

Wilson brought an Action upon the Case upon a Trover against *Packman*. The Case was thus; A man dyed Intestate, and the Ordinary committed the Administration to a Stranger, and after the next of kindred of the Decedent sued out a Citation in the Court Christian, to have it repealed and (*pendente lite*) the administrator to defeat the Plaintiffe selleth the goods of the decedent to the defendant, and after the Letters of Administration, were revoked by sentence. and the first sentence annulled and made voyd, and the Administration granted to the Plaintiffe. And it was resolved, that the action did not lye; and in this case the diversitie was holden, betweene a suite by Citation, for to countermand or revoke the former administration, and an appeale, which is alwayes a reserving of a former sentence, for an appeale doth suspend the forme sentence, otherwise of a Citation.

And

And in this case because the first Administrator had the absolute propriety of the goods in him, without question he may sell them to whom he will, and although the Administration be revoked afterwards, yet that cannot defeat the Sale. But if the sale or gift be by covine, it is voyd against Creditors by the Statute of 13. *El.* but it is good against a second Administrator. And if an Administrator wast the goods, and afterwards the Administration is granted to another, yet every debtor shall charge him in debt. An Administration may be granted upon condition, and whatsoever the Administrator doth before the condition broken, is good.

Gregories case, 38. El. Banco Regis. fol. 20.

Verba equivoca & in dubio posita, intelliguntur in digniori & potentiori sensu, secundum excellentiam, as if the speech be or writing of J. S. generally it shall be intended of the father, where the father and sonne are both of a name; and if it be of two Brothers both of a name, it shall be intended of the eldest, for these are more worthy; so where the Statute of 4. & 5. *Phil. & Ma.* speaketh in any Court of Record, it shall be intended of the foure Courts at *Westminster*, because the Kings Attorney is attendant there.

Michelbornes case, 38. Eliz. Banco Regis fol. 21.

THE Court of Marshalsea, doth onely hold plea of actions of trespassse, within the verge, if the one of the parties be of the Kings household, and in contracts and Covenants, where both parties are of the Kings household, and of none other actions, nor persons, by the Act of *Articuli super Chartas. 28. E. 1.*
But

Butler and Goodalls Case, 40 El. Banco Regis, fol. 21.

IT was resolved upon the Statute of 21. H. 8. that a Parson of a Church ought to stay and be Com-morant upon his Rectory (*viz.*) upon the Parson-age-house, and not in any other house, although it be within the Parish, but lawfull imprisonment without covine, is a good excuse of non-residence: also if there be no Parsonage house, for *impotentia excusat Legem*; also sicknesse without fraud, if the patient remove by advice of his Councell in Physick *bona fide*, for better aire, and recovery of his health.

Ambrosia Gorges Case. 40. El. fo. 22. in Cur. Wardorum.

IT was resolved, that the Father shall have the Wardship of his Daughter and heire apparent, so long as she continueth his heire apparent; But when the Father hath issue a sonne, then she shall be in ward to the Queene; for then he is heire apparent, and not the daughter. *Ambrosia* was daughter of Sir Arthur Gorge by Douglas, Daughter and Heire, and Vi-count Bindon, and was married to Francis Gorge, which Francis dyed, when *Ambrosia* was of ten yeares of age. It was resolved also that the Queene notwithstanding the said marriage, should have the Wardship of the said *Ambrosia*; for it was not a compleat marriage, because to every marriage there ought to be a consent, For *Consensus non concubitus facit matrimonium, & consentire non possunt ante annos nubiles*; And upon conference had with the Civilians, it was agreed after such a marriage, if the Husband and the Wife marry again, it shall not be counted Bigamie And 30. E. 1. tit. Gard. 156. if the Ancestor marry his heire *infra annos nubiles*, and dye, the Lord shall recover

Lib. 5. Marquesse of Winchesters Case. 251

recover the body of the Infant, because the heire may disagree; It was agreed that the grandfather shall not have the wardship of the son within age, the father being dead in his life time.

*Marquesse of Winchester his case, 41. Eliz.
fol. 23. in Banco Regis.*

BY the Law it is not sufficient, that the Testator be of memory (when he makes his Will.) to answer to ordinary and usuall questions, but he ought to have a disposing memory, so as he is able to make disposition of his Lands with understanding and reason. And this is such a memory, which is called safe and perfect memory, otherwise a Prohibition lyeth at the common Law generally, to stay all the proceedings in the spirituall Court, as the Probate of the Will, &c. untill this Suggestion be tryed at the common Law,

Reades Case, 42. Eliz. banco regis, fol. 24.

IN trespassse the Defendant makes title, for that A.W. was seised in fee, and leased to him, the Plaintiff maketh title by discent, and traverseth the Lease and good, for it may be true, that A.W. was seised, and yet that a discent was cast to the Plaintiffe, therefore the Lease is most materiall to be traversed.

Helyars case, 41 Eliz. Banco Regis, fol. 24.

IN a Replevin the Defendant avoweth by grant of a terme by I. A. to S. from whom he claimeth, the Plaintiffe pleads in Barre, that I. A. Married T. who by a former deed granted the terme to the Plaintiffe, and

and traverseth the grant made to S. and vitious, for he who claimeth by the first assignment shall not traverse the second, but he who claimes by the second shall traverse the first. But the first Feoffee shall traverse the last feoffment, and the last feoffee shall not traverse the first feoffment, because fee may be gained by disseisin after the first feoffment, but a Lease for yeares cannot.

Ruddocks Case, 41. Eliz. fo. 25. com. banco.

IN replevyn against six the Plaintiffe recovers, the Defendants bring error, the Plaintiffe pleads the release of one of them: not good: Where diverse are to recover a personall thing, the release or default of one barres all, but not where they are to discharge themselves of a personalty, if they are compelled to joyne, as in error an attaint, otherwise in Outlary, because not compellable to joyne, for where they are to discharge themselves, they have no joynt interest, and although they shall have their damages againe, it shall be intended that they paid them of their severail goods, otherwise it may be doubted if Execution had beene made of goods, which they have joyntly.

Sharps Case, 42. Eliz. fol. 26. com. banco.

IF a man make a Feoffment in Fee, or a Lease for life, and say to the Feoffee (being either on the Lands or within the view) *enter into this Land and enjoy the same*, according to this deed, &c. this is a good livery, but the delivery of the deede upon the Lands without any further ceremony or saying, doth not amount to a Livery. *Throughgoods Case. 9. Jacobi*, in ninth Booke. The actuall delivery of

a Writing, sealed to the party without any words^t, is a good livery, but not a livery of seisin, although the Party be upon the ground.

If I deliver a Deed unto the feoffee or Lessee of the Messuage, mentioned in the Deed in the name of seisin of the said Messuage, and of all the Lands, tenements, &c. in the same contained, or other such like words, without any ceremony, or act done, this is a good seisin.

The Cases of Souldiers. 43. Eliz. fol. 27.

THE Stautes of 7. H. 7. cap. 1. and 3. H. 8. cap. 5. against Souldiers who run away, are acts perpetual, for the word King includeth all his succession, and a gift to the King inureth to his Successors.

Vicount Mountagues Case. 43. Eliz. in Scaccar. fol. 27.

VICOUNT M. with License to the K. suffers a recovery to B. and D. to uses with power of revocation and limitting of new, and revokes and limits new uses, the King shall have noe fine for alienation.

1. Resolved, if the King doth license to alien to one, and alienation is made to the use of another, the King shall not have a fine, for although that the King was not informed of his Tenant, yet the use is executed by the Statute of 27. H. 8. which can doe no wrong, and the proviso in the Statute, that a fine shall be paid for executing of uses, is to be intended of uses raised by Covenant, or declared upon a Fine, Feoffment, &c. when no License of alienation is obtained.

2. Al-

2. Although that by revocation, and new limittation of uses, the tenant of the King be altered, yet no fine is due, because all ariseth out of the estate of B. and D. which was made with License.

Greenes Case, 44. Eliz. banco regis, fol. 29.

TENANT for life, of a Mannor to which an advowson is appendant, the remainder in Fee to I. S. presenteth one, who at the suite of the Tenant for life is deprived for not reading the Articles; but no notice is given to the Patron, the Queene by lapse presents the Defendant, Tenant for life, and his incumbent die, he in the remainder presents the Plaintiffe Greene, who recovereth.

1. Resolv. Although the Patron were party to the Suite, and so had notice, yet lapse shall not incurre without notice given by the ordinary, as the Statute speakes, and the notice ought to be speciall, that he did not reade the Articles, and therefore was deprived, and generall notice is not sufficient.

2. The Church is voyd, *Ipsa facto*, by the Statute of 13. *Eliz.* without deprivation.

3. Of the Queene present *Ratione Lapsus*, where she is Patron, this is voyd, *A fortiori*, when she had no title at all.

4. The Patron is not put to a *Quare impedit*, by presenting him who read not the Articles, nor by collation, but by Collation of him who had right to Collate, the Patron is put out of possession.

5. The Queene may be put out of possession of an advowson, because it is transitory, but she cannot be put to a Writ of right of advowson, for none can gaine the Inheritance from her by wrong.

Boothies Case, 3. Jacobi. com. banco. fol. 30

THe condition of an Obligation, is, to deliver an Obligation to the Oligee, and to acknowledge satisfaction, it must be done in convenient time, for acts transitory to be done to the Obligee, although a place be appointed, shall be done in convenient time, and acts of their nature locall, ought to be performed in convenient time, if concurrence of the Obligor and Obligee be not requisite. Also here the delivery of the bond being transitory, and the acknowledging satisfaction such an act as may be performed in the absence of the Obligee, they ought to be done in convenient time, without request: but if the act be locall, and their concurrence necessary, the Obligor hath time, during his life, if not hastened by request: If the concurrence of the Obligor and a stranger be necessary, it ought to be done in convenient time, if concurrence of the Obligee and a stranger, it ought to be hastened by request: And alwayes, if the Act to be done is not for the benefit of the Obligee, but a labour to the Obligor, or a stranger, there he had time during his Life.

Fitz-VWilliams Case, 2. Jacobi banco regis. 32.

BARON and Feme Tenants for life, and to the heires of the body of the Baron, the Baron sole is vouched; in a common recovery, the taylor is Barred. *Copledicks Case, 3. Report. 2. Resol.* If Tenant in taile suffer a recovery to his owne use, the remainder to his wife with diverse remainders over, with power of revocation and limitation of new uses by any such writing, he revoketh all the remainders except that to his Wife; and by the same deed limits new uses & this

this is good, for by any such writing shall be intended the same or any such, and it may be by the same deed, for, first it takes effect as a revocation. 2. By limitation of new uses, and there are not more instances then one in it. See there *Leaper* and *VVroth's Case*, cited 20. *El.* to prove, that powers whereby the interest of Strangers shall be changed, shall be taken strictly, as a power to make Leases for twenty one yeares, he cannot make a lease for twenty one yeares, to commence *in Futuro*.

The Bishop of Bathes Case. 3. Jacobi. com. banco. fol. 34.

THe. B. 18. H. 8. Leaseth to E. and R. for sixty yeares, proviso, if they dye within the terme, that the B. and his Successors shall reenter. E. dyes, the B. dyes, the Successor Leases to C. *Cum post five per mortem &c. prædict. R. acciderit vacare*, for sixty yeares with confirmation. R. dyeth: Resolv. Every Lease ought to have a certaine beginning, and the continuance ought also to be certaine, either by expresse number of yeares, or by reference to an expresse certainty, or where a Lease may be reduced to a certainty by matter, *Ex post facto*. Agreed, the second Lease vests presently in point of interest, to take effect in possession of the end of the first Terme if by none of the accidents the first lease become voyd in the meane time, and then the Lease shal commence at the first accident which doth happen, and the Lessee hath no Election.

The Deane and Chapter of Worcester's Case. 3. Jacobi. fol. 37.

THE D. and Ch. seised of a Mannor in Fee, in which were Copy-holds grantable for three lives, for 8. s. 8. d. payable quarterly, and herriottable, grant a copy-hold for the Life of three, reserving the old rent halfe yearly, this is not voyd by 13. Eliz. cap. 1. Resolved, the grant of a copy-hold for the life of three is good, for although there may be an occupancy, yet it is not inconvenient, for an occupant shall be punished in wast. 2. Grant of a Copy hold is a demise by the intent of the Statute, for in Law it is a Lease at will. 3. The omission of Herriot doth not make it voyd, because the annuall rent is reserved. 4. It is sufficient that the yearly rent be reserved twice in the yeare, for the Statute saith, yearly, which maketh a difference between this Case, and the Lord Mountjoyes Case, in the fifth Report.

Bellamy's Case, 3. Jacobi. com. banco. fol. 38.

A Lease upon condition, that the Lessee shall not alien without License, Assignee of the Lessee pleads that the Assignment was with License, and shewed not forth the Deed of License. 1. Because he did not claime by it. 2. Because the License was, *Ex provisione hominis*, and not *Ex institutione legis*. 3. Because it was executed and good.

Henry Finches Case, 3. Jacobi. banco regis. fol. 39.

A Grant of a rent charge out of diverse Mannors, &c. in the Parishes of E. and W. *Aus alibi dictis*
S. m.

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manerij; spectant. and out of Lands, which is not parcell of any of the Mannors, these are not charged with the distresse, for, *Alibi* doth not charge more Land then is parcell of those Mannors, but all parcells of the said Mannors out of the said Parishes.

Sir Anthony Mildmayes Case, 3. Jacob. banco regis. fol. 40.

RESolved, a perpetuity is against the rules and policy of the common Law. 2. It is impossible that an estate taile shall cease, before that Tenant in taile dyes without issue, and an estate cannot be made to continue as to one, and determine as to another except by Statute. 3. A gift in taile upon condition, that he shall not suffer a common recovery, is voyd, because he had power by the Law. 4. It is a voyd saying, that his estate shall cease, if he goe about, &c. for, *Non officit conatus nisi sequatur effectus*. Also, many ambiguities will arise thereupon, because the Law doth not define it, and it is so uncertaine, that it is not traverfable.

Blakes Case, 3. Jacobi. Com. banco. fo. 43.

AN accord with satisfaction is a good barre in a Writ of Covenant, because the duty accrueh not meerly by the deed, but by a torte subsequent, together with the deed, and it is a good barre in an attainr, because this is not founded upon the record onely, but upon the false Oath also. In all cases where an arbitrament is a good Plea, an accord with satisfaction is also, and so generally in all Actions where damages onely are to be recovered.

Higgins Case. 3. Jacob. com. banco. fo. 44.

IF a man have Judgement upon an Obligation, so long as this judgement is in force, he may not have a new action upon the same Obligation. For, *Interest reipublice ut sit finis litium & infinitum in jure reprobatur.* A Statute Staple is but an Obligation recorded, and one Obligation cannot drowne another, although they be both for one Debt, and the Obligee may choose upon whither he will bring his Action. *It H. 4. and 2. Jac. Sir William Cornewalles Case, and Brambwaytes Case,* and in every judgement, the Defendant is amerced, and so he shall be amerced, in *Infinitum.*

Dowdales Case. 3. Jac. com. banco. fol. 45.

IN Debt against an Executor, the Defendant pleads, fully administred, the Plaintiffe saith; that he hath assets at E. the Jury found assets in Ireland.

1. Resol. When the place is materiall the poynt in issue cannot be found in another place. 2. Where the place is named but for conformity, assets may be found in another County. 3. In a generall issue, the Jury shall finde all materiall locall things in another County. 4. The Jury by a meane shall trie locall things in another County, as a release in a forreigne County, the Jurors shall asseffe damages for the profits of the Land in the other County. *Multa conceduntur per obliquum quia non, &c.* but in case of felony, the Tryall shall be where the offence was done. 5. The finding of assets is the substance, and that it is in Ireland is surplusage: A thing done beyond the Sea shall

shall be tryed here, if the foundation of the Action be here.

Boswell's Case. 3. Jac. Banco regis. fol. 48.

IN a *Quare impedit*, judgement was given, to remove the incumbent of the Queene, not party to the Writ who was presented, pending the Writ, Resolv. That by the common Law, by admission and institution, the Usurpor gaines the inheritance of the advowson, without regard of the nonage of the Patron, because he is in by judicall act, and the Bishop shall be supposed not to doe wrong to the Patron, and the incumbent shall not be disturbed to exercise his function, but the King shall have a *Quare impedit* at the common Law. Collation doth not put him who hath right to present, out of possession, but if one have right to Collate it doth, an Infant by the Act of W. 2. c. 5. shall have a *Quare impedit*, if a man usurp upon an infant who had a Mannor, to which, &c. by descent, who at full age infeoffeth B. the Church voideth, &c. by the usurpation the infant was out of possession, and his right passed not, and seems the infant is without remedy: If a Clerke commeth in by course of Law, this gaineth not the inheritance against the right Patron, who was not party to the Writ. The King shall not recover damages by this Statute, for he is not within the first branch, *Si tempus semestre transierit*, nor within the second Branch, for that depends upon the first, yet he shall count for damages. An incumbent shall not be moved, if he be not named in the Writ, and if he be not admitted, &c. pending the Writ, and lapse shall not incur if the Bishop be named in the Writ, otherwise if he be not: If he who is presented pending the Writ, be in by rightfull Patron or not, yet he who recovereth in

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a *Quare impedit*, shall have a generall Writ to the Bishop, which he must execute of necessity, and after that, the parties may try their titles as the Law shall determine.

Countesse of Rutlands Case in the Starre-Chamber.

3. Jacobi. fo. 52.

THAT the person of a Countesse or a Baronesse may not be arrested for Debt or trespassse, for although in respect of their Sex they may not sit in the Parliament, yet they are Peers of the Realme, and shall be tryed by their Peers, Stat. 20. H. 6. Peers of the Realme may not be sworne in any Inquest; a Countesse in marrying with a Husband, doth loose her Name of a Countesse.

If a Baronesse, &c. by Marriage, marry againe under the Nobility, shee looseth her dignity, but if she be Noble by birth, or descent, yet whomsoever she Marrieth, she remaineth Noble; for Birth-right is Character *indelebilis*, and that which is gained by Marriage, may also be lost by Marriage.

A Sheriffe ought not to dispute the Authority of Courts, but he ought to Execute the Writs to him directed, for thereunto he they Sworne. Serjeant at Mace upon a *cap. ad satisfaciendum*, came to the the said Countesse in Cheapside, being in her Coach, and touched her body with the Mace, and said, I arrest you *Mace* me at the Suite of S. and those were all the words that were us'd, and thereupon compell'd the Coach-man to carry her unto the Counter-gate in Woodstrete, and the Sheriffe tooke her into his house. In this Case it was resolved, that the Sheriffe, Bayliffe, &c. upon the Arrest ought to shew at whole suite, out of what Court, for what cause it is, and when the processe is returnable, and that this generall Arrest

of the Countesse cannot be said, that it was by force of the said Writ of Execution, and that this Arrest was of the Serjeants owne head, without warrant, and against Law, and that the said Countesse was falsly imprisoned, but she remained in the Sheriffes custody 7. or 8. dayes, untill shee paid the Debt, but because the Arrest was by a fained Action, entered in the Counter, the Serjeants were sentenced.

The Lord Chandos case. 4. Jacobi. fol. 55.

THE King grants to B. in taile, and in consideration of the surrender of the Letters Patents, by force whereof the King is seised in fee, granteth to him and his wife, and to the heires of B. the reversion passeth, for the recitall that the King was seised in fee, was but the Collection of the King, and no part of the consideration or suggestion of the party; And when the King grants land in possession, if he had but a reversion, this shall passe, for he is not deceived because seisin passeth then he intended.

Bredimans case. 4. Jacobi. Com. Banco. fol. 56.

A Man deviseth a rent for life out of a Mannor, and he deviseth the Mannor for yeares, the termor enters, and pays the rent, after the Terme, the devisee brings an assize against the Terretenant. *Resol.* Payment by lessee for yeares of the rent giveth no seisin to have an assize. 1. In respect of the imbecillity of his estate. 2. He cannot give seisin because he had not seisin, and therefore a Præcipe lyeth not against him, because he cannot render seisin; but he may take seisin to the use of him in the freehold: A disseisor may give seisin of a rent secke, because he hath a freehold, and it is lawfull. 3. A rent secke is *cactus & siccus*,

secus, therefore it behoveth the first payment (which giveth life unto it) shall be made by a Tenant of the freehold, and in this case being created by devise, an Annuity lyeth not thereupon, otherwise if it be by grant: and Tenant of the freehold ought to attorne to a grant of such a rent over, therefore he shall give seisin: But seisin by a Bayliffe is good, if seisin were had before within sixty yeares, and seisin given by Tenant at will is good, but it ought to be pleaded as payment by the lessor himselfe. If the King hath rent out of a ville to be payd by all the Inhabitants; seisin alledged in generall without naming any is good.

Gatewards case. 4. Jac. in Com. Banco. fol. 59.

TO claime common *ratione Commorantia & residen. in villa de B.* is not good; for no man may have interest in common in respect of a Messuage, wherein he hath no interest; For custome should alwayes extend to that which hath certainty & continuance, and without question tenant in fee simple ought to prescribe in his owne name, and tenant for life or yeares, by *elegit* at will, &c. in the name of him that hath the Fee, and he that hath no interest cannot have any common, and none that hath any interest, although it be but at will, and ought to have common, but by good pleading he may enjoy the same.

No improvement might be made in any waists, if this custome (*viz.*) in respect of habitation and Comorance) should be allowed, for tenants for life or yeares at will, by *elegit*, by Statute, &c. of the houses of the Lord, should have common in the waists of the Lord, if this prescription were allowed, which were inconvenient: A Custome that every Inhabitant in B. shall have a way over such grounds, either to
S 4 the

the Church, or Market, &c. is a good custome, for that is onely easement, and no profit, and a way or passage may well *sequi personam*; The Lord cannot claime common in his owne soyle.

A diversitie was taken and agreed upon between a prescription and a custome, a prescription is alwayes alledged in the person, and a custome ought alwayes to be alledged in the Land, for every prescription ought to have by common intendment a lawfull commencement; but otherwise of a custome, for that ought to be reasonable, and *ex certa causa rationabili iustata*, as Littleton saith; But it needeth not to have intendment of a lawfull commencement, as custome to have Land Devisable, or of the nature of Gavell kinde, or Borough English. These and such like customs are reasonable, but by common intendment, these cannot have lawfull commencement, by grant, or act, or agreement, but onely by Parliament; and the custome in the case at barre was repugnant, for it was alledged that the Custome of the Towne was, that every Inhabitant had used to have common within a place in the Towne of H. which was another Towne.

Catesbyes Case, 4. Jac. fol. 61.

Six moneths being halfe a yeare (*semestre*) is given to the Patron of an advowson to present, and according to the Kalendar, and not after 28. dayes to a Moneth; and the Statute saith, *Si tempus semestre non transferit ad iudicentur damna ad valorem, &c. per dimidium anni*; and being ambiguous, it shall be construed for the benefit of the Patron.

101. 200. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

THE Lady M. tenant for life of the Mannor of B. the remainder in fee to the Lady Finch, shee and S. her husband and D. levyed a fine to one of the demesnes, who grants and renders to D. for 50. yeares, the reversion to S. and his wife, and her heires, with proviso in the Deeds which directed the fine that the reversioner shall enter and hould Courts; And it was averred that this was knowne by the name of the Mannor of B. D. maketh his sonne of three yeares of age executor, and administration was committed to R. T. S. and his wife levy a fine of all the lands of the wife in K. except the Mannor of B. to the use of the same for life, the remainder to Sir M. F. R. T. demiseth to P. L. for ten yeares, Dame M. dyeth, P. L. entreth, by vertue of a power of revocation and limitation of new uses, S. with the assent of the Lady F. his wife limitteth the uses to one who ousteth P. L. and maketh a feoffment to the use of the Lady F. for life, the remainder to H. F. in taile, P. L. reenters, Dame F. dyeth, H. F. for rent arreare distraineth.

1. *Resol.* By the grant and render of the demesnes the Mannor is destroyed, because in an instant the services and demesnes are severed by act of the party; but otherwise it is, if by Act in Law, as upon partition; so it is of an advowson appendant, &c. and upon partition many Mannors may be made of one, but not by the act of the party. 2. B. is excepted by the name of a Mannor. 1. Because the intent of the parties is so. 2. Exception of misnomer shall not be favoured in Law. 3. It is sufficient in Law in many cases, that a thing be reputed as it is named, as if a remainder be limited to a Bastard by the name

name of sonne of J. S. and as to that was objected, that this reputation is not time out of minde, this needs not, if it be of convenient time as this was, for it was a Mannor revera before to levy a fine, and continue the name after, so that this reputation is stronger having such a ground, and reputation serverth in Writts amicable, although not in adversarie.

3. The lease made by the Administrator *durante minori etate*, is good, because the administration is generall, and not speciall to the benefit of the Infant, but howsoever this is good during the administration.

4. P. L. in the life of the Lady M. had but *interesse Termini*, so that attornement cannot be in his life, but after the death of the La. Mo. by entry of the lessee the reversion is in S. and his wife without attornement, because attornement needs not, because the reversion is settled, and he hath no meanes to compell, &c. otherwise it is where an attornement may be had: and although that P. L. lessee of a lessee of part cannot make an expresse attornement, yet his reentry shall be an attornement in Law, so he who hath *interesse termini*, may make a surrender in Law, but no expresse surrender, and a man of non-sane memory may make an attornement in Law, but not an expresse attornement.

The Lord Darcies Case. 4. Jacobi Com. Banco. fol. 70.

TENDER is not necessary to have the single value of the heire male or female; but the heire female shall not forfeit the double value, because the Statute of Merton is *si se maritaverit* at the age of 14. yeares, &c. at which time the heire female is out of Ward: and where by the Statute of Westm. 1. cap. 22. it is provided that the Lord shall have two yeares to make

Tender, It giveth not the double value, but if he waive the two yeares, he shall have the value without Tender; *quia de mero Jure, &c.*

Burrells case. 5. Jac. Com. Banco. fol. 72.

If the father make a Lease by fraud and dyes, the sonne sells the land knowing or not knowing of it, the vendee shall avoyd it. 2. If the father makes a lease to the sonne, who assigneth it over by fraud, the father dyes, the sonne sells the land, the vendee shall avoyd it.

Sir Drue Druries case. 5. Jac. Cur. Wardor. fol. 73.

E. 1. granted to the Towne of Y. *Quod omnes de villa ariundi licet terras, &c. extra libertatem villa, &c. tenerint in Capite, se mariare possint juxta libertates villa predicta*: R. D. dyed seised of a house parcell of a Monasterie, dissolved in the time of H. 8. houlden in Capite, the King grants the wardship of his sonne to the Plaintiffe, and makes the Ward Knight, the Plaintiffe brings a *valore Maritagij*.

The Charter doth not discharge the defendant; 1. Because it is *juxta libertates villa predicta*. and the liberties are not shewed. 2. This Charter cannot extend to a Tenure created in the time of H. 8. 3. It is not shewed that the defendant was borne within the Towne.

Resol. If the heire in Ward be made a Knight, he is out of Ward for his body, because by intendment he is able to doe Knights service, otherwise if made a Nobleman.

2. By the death of the tenant the value of the marriage is vested in the Lord, and cannot be devested by Knighthood, &c.

3. If

3. If he be Knighted in the life of his ancestor, he shall not be in Ward at all.

4. If making of the heire in ward Knight shall diminish the value, it will be prejudiciall to the Subject, and to the King, for no one will buy their Wardships.

5. After Tender and refusall if the heire be made Knight, and marry, he shall not forfeite the double value, because he is out of Ward, but immediately the Lord shall have a Writte *de valore maritagij*.

This was the last Case that Sir John Popham chiefe Justice of England, &c. ever Argued.

Sir George Cursons case. 7. Jac. Cur. Wardor. fol. 75.

Sir W. L. seised of a reversion expectant upon taile (made to his sonne) of land in Capite, Covenanted to stand seised to the use of his neece, the sonne dyeth, the King shall not have premier seisin.

1. *Resol.* It was Collusion apparent within the Statute of *Marlebr. cap. 6.* to infeoffe the heire apparent; and if he infeoffe others upon Collusion averrable; but no averrement shall be where the remainder or reversion is left in a stranger, or upon a Devise.

2. Or otherwise to dispose in the Statute of 32. H. 8. have relation to wills onely, for before the Statute every man might dispose of his lands by act executed.

3. The Clause in the said Statute which saveth premier seisin to the King, hath relation onely to acts executed, for the King shall have without that premier seisin of the third part not devised, but without that he shall not have it of any part conveyed by act executed.

4. If the grandfather convey land to the sonne living the father, this is out of the Statute, otherwise if

if the father be dead : and so a gift to a Collaterall Kinsman, who is not heire apparent, is out of the Statute, for none will (by intendment) disinherit his heire to defeat the King of his Wardship, or primer seisin, and so is the experience of the Court of Wards.

Bullens case. 3. Jacobi Com. Banco. fol. 77.

THE Lord may have a certeine summe *pro certo legata*, for it shall be intended it was granted at the first by purchase of the Leete for the ease of the Tenants, and in consideration of the Lords claiming of it at his owne costs every Eyre : The issue was if the Plaintiffe was a chiefe pledge, and by speciall verdict he was found a Reliant, and certified by the chiefe pledges to be a chiefe pledge, and was amerced for his default. It seemeth he was not, *Sed materia predicta consopita fuit in arbitrio*. See 30. E. 3. 23. of franke pledges.

Lord Abergavenies case. 5. Jacob. Com. Banco. fol. 78.

A Judgement in an action of Debt is had against a joyntenant for life, who afterwards releaseth to his companion all the right, &c. yet that moytie is liable to the Judgement, and so it is of a rent charge during the life of the Releasor.

Sir Edward Phyttons case. 5. Jacob. Com. Banco. fol. 79.

EXecutors may take benefit of the Kings generall pardon, by which is enacted that all Subjects of the King, their Heires, Successors, Executors and Administrators, shall be acquitted and discharged of all offences, contempts, &c. and that shall be expounded

ed most beneficially for the Subject. And further doth give and grant all goods, Chattells, Debts, &c. forfeited; And prohibiteth any Clerke to make out any Writte, &c. Provided that every Clerke may make forth *cap. ut.* at the suite of the Plaintiffe against persons outlawed, to the intent to compell them to answer; and that the partie shall sue forth a *scir. fac.* before the pardon in that behalfe shall be allowed; which is as much to say, having regard onely to the Plaintiffe; But in regard of the King, it is an absolute pardon, and grant of his goods, and he is a person enabled against the King, but not against the partie plaintiffe. And every person by himselfe, or his Attorney, may plead this act for discharge: Executors shall have restitution upon the Statute 21. H. 8. Also Administrators shall have a Writ of error upon the Statute 29. El. as was adjudged in the Lord Mordants case, 36. El. And yet these Statutes speake onely of the partie, and not of the Executors or Administrators, and because no Writte can be against Executors, they may plead it without Processe.

The End of the Sixth Book.

THE

OF THE SEVENTH BOOK.

Postnati.

Calvins case. 6. Jacobi Banco Regis. fol. 1.



C. By his gardian bringeth an assize, the defendants say, the plaintiffe ought not to be answered, *Quia est alienigena natus 50. Novembris Anno Domini Regis Anglia, &c. tertio apud, E. infra regnum Scotia ac infra ligeanciam Domini Regis Regni sui S. ac extra ligeanciam Regni sui Angl. &c.* the plaintiffe demurreth.

The Case was Adjourned into the Exchequer Chamber, and was argued by two Justices every day, and by the Chancellour, and resolved by the Chancellour, and all the Justices (except *Walmsley* and *Foster*) that the plaintiffe ought to be answered.

For these six demonstrative Conclusions drawne from the Law of Nature, the Law of the Land, Reasons of State, and Authorities of Records and Booke Cases.

1. Every one that is an Alien by birth, may be, or might have been an Enemy by accident; but C. could never be an Enemy by any accident whatsoever; ergo, no Alien by birth.

2. Whosoever are borne under one naturall ligeance, due by the Law of nature to one Sovereigne, are

are naturall borne Subjects; But C. was borne under one, &c. *ergo*, a naturall borne Subject.

3. Whosoever is borne within the Kings protection, is no Alien; But C. was borne under, &c. *ergo*, he is no Alien.

4. Every stranger borne, must at his birth be either *amicus* or *inimicus*; but C. at his birth could neither be *amicus*, nor *inimicus*, because he was *subditus*, *ergo*, no stranger borne.

5. Whatsoever is due by the Law of man, may be altered, but naturall leageance of the Subject to the Sovereigne cannot be altered; *ergo*, not due by mans Law.

Lastly, whosoever at his birth cannot be an alien to the King of E. cannot be an alien to any of his Subjects of E. but C. at his birth could be no alien to the King of E. *Ergo*, he cannot be an alien to any of the Subjects of E. the Major and Minor both be *Propositiones perspicue verae*, and although *Alienigena dicitur ab aliena gente*: yet that is all one, as *Aliena dignitas*, and arguments drawne from Etymologie are feeble, for *Sape numero ubi proprietas verborum attenditur sensus veritatis amittitur*, yet when they agree with Law, Judges may use them for Ornament, and diverse inconveniences would follow, if the Plea against the Plainriffe should be allowed: For first, it maketh leageance locall, whereupon should follow, first that leageance which is universall, should be confined within locall limits. 2. That the Subject should not bee bound to serve the King in Peace or in Warre out of those bounds. 3. It should illegitimate many, which were borne in Gaspayne, Guyan, Normandy, &c. and diverse others of his Majesties Dominions, whilst the same were in actuall obedience. And lastly, this strange and new devised Plea inclineth too much to countenance that dangerous and desperate error of the

the *Spencers*. (viz.) That Homage and Oath of allegiance, was more by reason of the Kings Crowne, (that is, of his politique capacity) then by reason of the person of the King, which was condemned by two Parliaments, one in the Reigne of E. 2. called, *Exilium Hugonis le Spencer*; and the other in 1. E. 3. cap. 1. No one Opinion in all our Bookes is against this judgement: The Lord Chancellour and twelve of the Judges, concurred in one opinion herein, and not in any remembrance so Honourable, and Intelligent an Auditor as was at this Case.

Bulwers Case, 27. *Elix.* fol. 1.

H. Recovered against the Plaintiffe in the common place, and dyeth, the Defendant in the name of H. Outlawed the Plaintiffe, who brings an Action of the Case in N. where the first Action was brought, and recovered, for there was the visible tort; when matter in one County dependeth upon matter in another County, the Plaintiffe may choose in which County to bring his Action (except that the Defendant upon generall issue pleaded, may be prejudiced of his Triall,) as if two conspire in one County, to Endite one in another County, and doe it, an Action may be brought in either, but if he be indicted, but not by them, there it shall be brought where the conspiracy was. If Manasse be made in E. whereby my Tenants recede into L. an Action shall be brought in E. if an action be founded upon two things, materiall and traversable in two severall Counties, an action may be brought in any of them. An Annuity granted in one County to be paid in another, the Action shall be brought where the grant was, he who is robbed may have an appeale of felony, in every County where the goods came, but of

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robbery where the fact was done onely : A lease for yeares in one County of Land, in another, Debt shall be brought, where the Lease was made, and wast where the Land lyeth, every Action which concerneth the life of a man shall be brought where the offence is committed : Every issue which ariseth upon an action in which Land shall be recovered, shall be brought where the Land lyeth, as in right of ward of Land or body, or intrusion of ward, and forfeiture of Marriage, and *Valore maritagij*, and *Quare impedit*, but ravishment of ward, where the ravishment was, and a *Quare non admisit* where the refusall was, before the Statute of 27. R. 2. c. 10. an Action for Land in diverse Counties, or for common in one County appendant to Land in another County, shall be brought by severall Writs in both Counties, but now, *In consinio comitatum* : a *per quæ servitia* shall be brought where the note of the fine is leyed.

Sir Miles Corbets case. 27. Eliz. in Scaccario. fol. 5.

RESOL: That the speciall manner of Common in *Norf*: called *Sbacke*, to be taken in arable land after harveſt untill ſowing begin is good. Reſol. alſo if in *D.* there are fifty acres, and in *S.* 100. *l.* who ought to intercommon for vicinage, *D.* cannot put in more in their Common then it will depaſture, and ſo to eſcape reciprocally, for the originall cauſe of this Common was onely to prevent ſuits in Champian Countries.

*Cases upon the Statute of 13. E. 1.
of Winchester upon hue and cry.*

Sendills case. 27. Eliz. in Com. Banco. fol. 6.

A Robbery for which the Hundred must answer by force of the said Statute, is to be done openly, so as the Country may take notice thereof themselves; but a Robbery done secretly in the house, the Country cannot take notice thereof, for every one may keepe his house as strong as he will at his perill; For it was adjudged in *Ashpoles* case, that the partie robbed, needed not to give notice thereof to the Country; For it may be that the partie robbed was bound or maimed, &c. so as he could not make hue and cry to give notice. A robbery was done in January presently after the Sunne setting during day-light; and it was adjudged, that the Hundred should answer for the same; for it was a convenient time for men to travell, or to be about their businesse. One was killed in the Evening and escaped, and by the common Law the Towne was amerced, for that was accounted in Law parcell of the day, and not of the night. But by the Statute 27. *El. ca. 13.* none shall have action upon the said Statute, except the partie robbed, so soone as he may, give notice of the same to any of the Inhabitants of any Village, Towne, or Hamlet, next to the place where the robbery was done, and if they in pursuite apprehend any of the offenders, that will excuse the Towne.

Milbornes case. 29. Eliz. in Com. Banco. fol. 6.

A Robbery was done in the morning *ante lucem*, the Hundred shall not be charged, *Cum quis felonice occisus fuit per diem, nisi felo captus fuit tota villata illa amercietur.*

The Earle of Bedfords Case. 29. Eliz. fol. 7.

1. **R** Esol. If tenant in taile make a voydable lease for yeares, and dyeth, his heire in ward to the King, or other Lord, the Lord shall avoyd this lease; but if an Infant make a feoffement, the Lord by Escheate shall not avoyd it, but a gardian shall, because he doth it in right of the Infant.

2. This avoydance is but during the interest of the Lord, for afterwards the heire may make it good: But if he who hath a particular estate avoideth an act in all, after his Interest determined, it shall not be made good: as if a feme be indowed of an appropriation, and her Clerke inducted, the appropriation is defeated for ever; so if a feme Covert (as a feme sole) levy a fine, and the Baron enters, and dyeth, the Conusee shall not have the land, for the estate is wholly defeated.

Ughreds Case. 33. Eliz. fol. 9.

THe M. of W. granted the Captainship of a Fort to the plaintiffe, and for exercising of the said office, and for finding a Master Gunner, and six Souldiers, granted to him an Annuity of 32. li. per annum, the plaintiffe brings an Annuity.

1. Except. It doth not appeare by the Count that the M. had power to grant this office, *Non allocatur.*

2. The

2. The plaintiffe doth not averre the exercising of the said office ; *Non allocatur* ; for if he had not used it, that shall come in on the other part, because this is a condition sublequent, and not precedent ; but if one be to have a thing in consideration of an act to be done by him, there he must shew the performance, because that amounts to a condition precedent, as in debt for salary, but if each party had equall remedy, one for the money, and the other for the act to be done, there the Count shall be without shewing the performance, as if one Covenant to serve, &c. and the other Covenants to give money, &c. But although that an interest vested is to be devested by non seafance, if it appeare to the Court that an action is not maintainable without the doing of it, there the doing of it must be averred ; as if an Abbot sole grants an annuity to J. S. *Pro Consilio*, &c. in action brought against the succellor, he must averre that he had given Counsell, &c. to the use of the House, otherwise if against the grantor.

Englefields case. 34. Eliz. in Scaccario. fol. 11.

Sir F. E. covenanted to stand seised to the use of himselfe for life, the remainder to his Nephew, Proviso that it shall be voyd upon tender of a Ring by him, after he was attainted of Treason, and all his inheritances forfeited by Statute ; the Queene leaseith to the defendant for forty yeares, by Statute it was enacted, that every one who had a patent of land of a person attainted. shall exhibit it into the Exchequer within two yeares to be Inrolled, one authorized by Letters patents in the name of the Queene tenders the Ring in the life of Sir Fr. the Queene bringeth intrusion.

1. *Resol.* When the Q. tenant per autre vie leaseith
T 3 for

for yeares, this is good without recitall of her estate, for it is lesse then her estate, as if shee grant *Totum statum suum*, for there is no torte, and shee is not deceived.

2. That this condition is given to the Q. but object. 1. That it was inseparable from Sir Fr. for his intent was the substance of it, and his intent cannot be transferred over. 2. Naturall affection is made the Judge whether the Nephew deserve that the use shall be revoked, and in so much that naturall affection cannot be transferred, no more can this condition which was created by naturall affection, and naturall affection determineth the estate. 3. Although the benefit of this collaterall condition be given to the Q. the performance is not: As to the first and second; It was answered, that the condition is onely the substance, and all the residue is but a flourish, and that is not an inseparable condition, for any one may tender a Ring as well as he.

As to the third; The performance is given to the Q. as incident to the Condition.

4. It was objected, that the estate of Sir Fr. was not subject to the condition, because he was not possessed by limitation of use, and by 27. H. 8. but he was seised of his auncient inheritance, *ergo*, the lease shall not be avoyded in the life of Sir Fr. It was answered, that Sir Fr. was seised by limitation of use, and that the lease shall be avoyded.

5. It was objected, that the Q. having made this lease, being seised *pur autre vie*, by her owne act shee shall not defeate it after: It was answered, that the Q. shall avoyde it, for her grant shall not inure to two intents; 1. to make the lease, &c. 2. to suspend the condition, and when the Q. had two rights, she shall not loose both without speciall words.

6. It was objected, that this tender ought to be found

found by office, because matter *in pais*, and if it be false the party hath no remedy, because the Certificat is not traversable: It was answered, that Certificats which informe the Q. of her title are traversable, but Certificats which are in nature of Trialls are not: also by the Tender the uses are determined, and by the attainder, and the act of 23. H. 8. the land is vested in the Q.

7. It was objected, that the conveyance was voyd, because it was not inrolled within two yeares, as the Statute requires, and so Sir Fr. was seised in fee, and the lease unavoydable. It was answered, that it was tendred in the Exchequer to be inrolled within two yeares, which is all the Statute requireth; the forfeiture was established by a speciall act, 35. Eliz.

The Case of Swannes, 34. Eliz. fol. 15.

A Game of Swannes in a common River are seised into the Queenes hands upon office found, I. Y. pleads that *Abbas, &c. gavisæ fuerunt toto proficuo omnium cignorum in æstuaris prædictæ. nidificantium*, and makes her selfe title to them, & prayeth an ouster *Le maine*: All wilde Swannes in a common River who have gained their naturall liberty, may be seised for the King, because they are *Volatilia regalia*, but a Subject may have them in his owne River; and if they escape into a common River, he may take them againe, upon fresh pursuite, Cignets shall be divided betweene the owners of the Swannes equally, but upon the Thames the owner of the Land shall have the third by the custome: whosoever hath a Swan marke must have it by grant of the King, or prescription, and he may grant it over, and he ought to have freehold of five Marks *per annum*, by the Statute of 22. E. 4. c. 6. A man may prescribe to have wild Swannes, but not

as here, but that the Abbot. &c. have used to take of them to their owne use, and therefore adjudged against I. Y. A Swanne may be an estray, and so cannot any other towle.

Sir Thomas Cecils Case, 40. *Eliz. in Scaccario.*
fol. 18.

Sir T. C. entered into an Obligation to the Queene to performe Covenants, and shewed in the Exchequer-Chamber matter of equiry to discharge him of the said Debt, according to the Statute of 33. *H. 8. c. 39.*

1. Resol. that Branch of the Statute which giveth liberty to the Subject to plead matter in equiry in barre of Debt due unto the King, extenderh to Debts due at the common Law; as well as by this Statute, because this Statute gives more speedy remedy for them, and so within the purview thereof, and so the other proviso of equall charging of Lands Subject to Debts of the King is generall.

2. The Court of Exchequer-Chamber in this case may decree upon English bill, although that Proceffe be in the Exchequer at the common Law, because to that purpose they are as one Court.

3. An Obligation to performe Covenants after Breach of them is within the Statute.

The Lord Andersons Case, 41. *Eliz. in Scaccar.* fo. 21.

Tenant in taile is bound by recognizance to I. S. who is arrainted, Tenant in taile dyes, his issue aliens *Bona fide*, the King shall not extend these Lands by the Statute. 33. *H. 8. c. 39.*

1. Before that Statue the King could not extend Lands in the hands of the issue in taile for the Debt
of

of his auncestor, because he was bound by *W. 2. De Donis.*

2. By that Statute Lands are extendable in the hands of the issue in taile, for Debt due to the King by judgement, recognizance, obligation, or other specialry, and other cases are out of the Statute.

3. The Alienee *Bona fide* is not within the Statute, because favoured as a purchaser, and he is a stranger to the Debt, and comes in upon good consideration, and benefit is given against the issue in taile, which was not before.

4. Debts due to a Subject and forfeited to the King, are not within the Statute, for they are not due originally to the King by any of the said foure wayes mentioned in the Act.

Butts Case, 42. Eliz. in com. banco. fo. 23.

A. Seised of black acre in fee, and of white acre for yeares, grants a rent charge to B. for life with distresse in both, B. distreines, and avowes in white acre, and good.

1. Resol. white acre is charged during the terme and life of B.

2. All the rent issueth out of black acre, for as an estate of freehold it cannot issue out of white acre, nor as freehold out of black acre, and a chattell out of white acre, because intire, it cannot be construed to be two rents contrary to the intent of the parties, and therefore an acceptance of a Lease of white acre doth not suspend it, and in an assize, black acre onely shall be put in view.

3. Although the rent issueth onely out of black acre, yet white acre is charged with a distresse. If a rent be granted out of three acres with clause of distresse in one, this is a rent seck for all, yet the grantee

tee shall distreine in the third acre for it, so if a rent be granted to two with clause of distresse to one of them, but a rent may be seck, and charge at severall times, and therefore if a rent be granted in fee with distresse for life, it is a rent charge for life, and seck after, but if the Clause of distresse be for yeares, it is a rent seck for all, because the freehold is seck.

The avowry was insufficient. 1. Because he said the rent issued out of white acre, where it issued out of black acre, and although the Plaintiff had disclosed the truth in his plea in barre, this doth not save the matter in substance vitious in the avowry. 2. He deriveth the rent out of white acre, *Virtute cuius*, he was seised for life, which is repugnant to have a freehold out of a Chattell, and so judgement given against him for insufficient pleading.

Cases of Quare Impedit.

Halls Case, 31. Eliz. fo. 25.

A *Quare impedit* against the Bishop, and incumbent, without naming the Patron, the Writ shall abate. 1. It is not reason the Patron shall loose his Patronage, without being named, in case where he may be named, as here. 2. The incumbent at the common Law could not pleade to the Patronage, and therefore it is no reason that he who cannot plead be named, and he who can, omitted, but now the incumbent may pleade to the Patronage by the Statute of 25. E 3 cap. 7. which inableth the possessor to counterpleade the title of the King, and by equity against a common person, in the one case after induction, in the other after institution: But in case where the Patronage shall not be recovered, or that the Patron

can-

Lib.7. Sir Hugh Portmans Case. 283

cannot be named, as in the Kings Case, a *Quare impedit* shall be against the incumbent sole, or against him, and the ordinary, so if a Bishop disturbe and die, it shall be against the incumbent sole, if a Patron be named and die, if the Writ shall not abate he shall be out of possession, and if it shall abate, the torte shall not be punished, but if the Patron be put out of possession, he hath remedy by writ of right, and if it shall abate, the Plaintiffe is without remedy, therefore the Writ shall stand.

Sir Hugh Portmans Case, 40. Eliz. fol. 27.

IF the Plaintiffe in a *Quare impedit*, after appearance be non-suite, or discontinue or be made a Knight, Pending the writ, this is peremptory, because it is his owne act, otherwise if the writ abate for default of forme, or by misnomer, for this may be the default of the Clerke.

Baskervills Case, 27. Eliz. fo. 28.

Tittle devolveth to the King to present by lapse, the Patron presents one who dyeth, the King hath lost the presentation, for he having the first presentation, he shall not have the second: otherwise the King may suffer Strangers to present one after another, and take his turne when he pleaseth, and by that meanes the Patron shall be in a manner disinherited; and the Statute of *Prærogativa Regis, nullum tempus occurrit Regi*, is to be intended when the King hath a permanent Tittle, and not transitory, when time is the substance of his Tittle.

Mounds

Maunds Case, 43. Eliz. fo. 28.

IN case of a reentry for non-payment of rent, or when any summe, *Nomine pena*, is to be forfeite, in both the cases demand ought to be made precisely on the day, a convenient time before the setting of the Sunne, in the one case in respect of a condition, and in the other in respect of the penalty; but in case of a distresse, he that hath the rent may demand the same at what time pleaseth him, for no losse or penalty insueth thereupon, but onely a remedy to come by his rent, and if demand be made any time after the day, and before the distresse, it sufficeth.

Discontinuance of Procelse, &c. by the death of the Queene. Trin. 1. Jacobi. fol. 29.

UPon a generall resummons the originall, and the issue are revived, and not the meane procelse, nor Voucher, nor Garnishment, but all the Procelse is revived upon a speciall resummons, but not in ayde prayer, or if a Verdict be given, and the King dieth before the day in hanck, because there summons lyeth not, therefore he shall not have resummons, but in case of Verdict, he for whom it is given may have his judgement upon *Scire facias*. But now, by the Statute of 1. E. 6. an action, suite, bill, or plaint, shall not be discontinued, if they are returned, otherwise if not, because the Statute saith, Depending. If one deliver an appeale to the Sheriffe within the yeare, and the King dyeth, for necessity the Plaintiffe shall have a *Certiorari*, and reattachment: so if a for-
medon

medon be brought within a yeare against the pernor of the profits ; offices of Sheriffes , not being of inheritance or by Charter, are determined by the death of the King. Suites depending in inferiour Courts are out of the Statute ; if the King dye after information preferred by him, all the proceeding is lost, but the information shall stand. 1. Because this is a record for the King, which shall not abate. 2. Because informations upon certeine Statutes are to be preferred within certeine time, but if the King bring an originall and dye, this is lost, if one plead to an Indictment , and the King dye, he shall plead *De novo*, but if he be convicted , judgement may be given in the time of another King , by the said Statute, and not before.

Case of a Fine levied by the King, tenant in taile, fo. 32.

Michaelmas. 2. Jacobi.

A Fine levied by the King, tenant in taile by gift of his auncestor who was a subject , barreth the taile. 1. It is reason, that as the King is bound by the Statute of *W. 2. De donis*, that he should have benefit of the Acts of 4. *H. 7. & 32. H. 8.* 2. A generall Statute bindeth the King of Lands descended from an auncestor a Subject, but not where it descends from an auncestor who was King, except in speciall cases. 3. The issues of the King at the time of the levying of the Fine are Subjects therefore within the Statute, and it seem'd to them that there ought to be Letters Parents to give power to the Conisee to enter into the Land.

Nevills Case, 2. Jacobi. fo. 33.

THe dignity of an Earle intailed is forfeitable for treason. 1. Resolved, this is within the Statute of *W. 2. De donis*, and experience is to give dignities in taile, with remainders over, also, this was an office anciently, and offices may be intailed. 2. A dignity may be forfeited at the common Law, by a condition in Law, for the Office of Earle was, *Ad consulendum Regem tempore pacis, & defendendum Regem tempore belli*; therefore he forfeits it when he takes Councell, and Armes against him. 3. If it were not forfeited by the common Law, yet it is by 26. *H. 8. cap. 13.* by this word Hereditament, and the words use or possession which are added, are to shew, that every Hereditament shall be forfeited: at the common Law, Donee in taile had *Potestatem alienandi post prolem suscitata*, but if he reteine the Land himselfe, he hath no absolute fee, for none shall inherit but the heire, *Per formam doni*, so it is now in case of annuity, and other things out of the Statute.

Penall Statutes. 2. Ja. fo, 36.

WHen a Statute is made by Parliament, the King cannot give the penalty, benefit or dispensation of the same to any Subject, but the King may make a *Non obstante*, to dispense with any particular person, that he shall not incurre the penalty of a Statute, and the King after a forfeiture or penalty of a Statute by judgement and recovery, may grant the same to any of his Subjects, by way of reward; and all the Judges of England subscribed to this, the 8. Day of November. 1604.

Lilling-

Lillingstons Case, 5. Jacobi. fo. 38.

TENANT in fee grants a rent charge, proviso, that the person of the grantor shall not be charged, the grantee acknowledgeth a recognizance according to 23. H. 8. and after releaseth to the grantor, the conisee sueth an extent, and brings debt against the grantor Terretenant. 1. Resolved, the rent is extendable, for notwithstanding the release it is *In esse* as to the Conisee, and cannot be discharged by the act of the Conisor, also, the extent relateth to the judgement, at which time it was extendable. See the Lord *Aburgavenies* Case, in the sixth Report. 2. Debt lyeth not so long as the extent indureth, for so long the rent hath continuance, although that by the release the free-hold be determined: if a rent charge be granted for life with proviso, as above said, if the rent be determined, debt lyeth against the grantor, because he had no other remedy.

Bedels Case, 5. Jacobi. fo. 40.

R. B. Covenants in consideration of paternall love, &c. to stand seised to the use of himselfe for life, the remainder to his Wife for life, the remainder over. 1. Resolv. although the consideration in the deed runneth not to the Wife, yet another consideration may be averred, which stands with the Deed. The limitation of an use to the Wife importeth a consideration in it selfe, so if it be to any of his blood, but if he Covenant in consideration of a 100. l. to stand seised to the use of his Sonne, nothing passeth untill Inrollment, *Quia expressum facit cessare tacitum.*

Eccres.

Bereffords Case, 5. Jacobi. fo. 41.

AN use is limited to A. B. and of the heires Males of the said A. lawfully begotten, this is fee taile, notwithstanding the words (of the Body) be wanting, and that lawfully begotten, are implied, for no heire shall inherit who is not lawfully begotten. Resolved, that to create an inheritance the word Heires is necessary, but the words *De corpore* are not necessary to make an estate taile, if there be words which Tanta-mount, and here the sence according to the intent of the Donor, is of or by the said A. lawfully begotten. A gift to a man *& heredibus de se exeuntibus*, or *Heredibus suis de prima uxore sua*, are estates taile.

Kenns Case, 4. Jacobi. fo. 42.

C. K. had issue by E. S. M. K. and they are divorced, and the Marriage sentenced voyd, C. K. married F. they have issue E. K. C. dyeth, E. K. is found by office to be Heire, M. and W. her Baron preferre a Bill, in the Court of Wards to traverse the Office to which the Committees of the Wardship answer, one of the Committees dyeth, M. and W. sue a Bill of Reviver, and M. having issue E. dyeth, E. her issue, and R. her Baron, bring a new Bill of Reviver.

1. Resolved, so long as the sentence stands in force, the issue of the first feme is a Bastard, because the spirituall Judge hath jurisdiction thereof, and our Law giveth faith unto it : Sentence of divorce may bee repealed after the death of the parties, but no divorce can be after their death, for that will Bastardise the issue, and the Court of the King hath tri-
all

all of it originally, not being hindered by any Sentence.

2. The Plaintiff shall not have a traverse without an office found for her, for the King being sure of wardship shall not be ousted by one, before that he be sure to have benefit by him, and 2. E. 6. cap. 8. doth not extend to give a traverse without office, but if by two offices two are found Heires, whereof one is within age, by that Statute the other may traverse immediately.

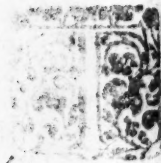
3. A bill of reviver upon a bill of reviver, shall not be suffered, for the infinitnesse, no more then a Writ by Journeys accompts. By all, the last bill was absurd, which prayeth, that the first bill be revived, because M. was dead, but it ought to be, that her Heire may traverse.

The End of the Seaventh Book.

V

THE

THE EIGHTH BOOK



the Prince of Wales, who was then
pleased to receive him, and to
make him a knight of the Order of
the Bath. He was then
with an expedition to the
other two, and was
of the same. He was
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THE EIGHTH BOOK.

The Princes Case, 3. Jacobi in Chancery. fo. 1.



THE Queene, 37. *Eliz.* grants three Mannors parcell of the Dutchee of C. to H. L. and G. M. the King (at the supplication of the Prince) brings a *Scire facias* against the said H. L. and S. H. to make Livery to

the Prince by force of the Statute of 11. *E. 3.* H. L. pleads, *Null tiel recorde*, S. H. pleads the Patents with a *Non obstante*. 32. *H. 8.* whereby these Mannors were made parcell, of, &c. and the Act of Confirmation, 43. *Eliz.* As to the plea of H. L. the Atturney sheweth an *Inspecimus*, and demurreth upon the plea of the other two who joyne, and as *Amici curie* repeate part of the Statute of 1. *H. 7.* touching the Duchie, H. L. demurreth.

1. Resolv. the Charter of creation of the Prince, Duke of C. 11. *E. 3.* is an Act of Parliament, for such a limitation to the first begotten Son is voyd without Statute, for if Graudfather King, the Father Duke, and Sonne be, if the King dyes, the Father is King, and the Son Duke, by the said Statute, against the rules of Law.

2. The Lands cannot be so annexed to the Duchie that they cannot be severed without Statute.

3. The estate is limited to cease when the King hath no first begotten Son, and to revive when he hath,

which cannot be without Statute. 4. It should be absurd, that six being then created Barles, that their creation should be firme, and the Creation of the Prince voyd.

5. In the Charter there is *De communi consilio Prelatorum, &c.* and in the end, *Per ipsum Regem & totum concilium in Parlamento*; such an Act as beginneth *Rex Statuit*, and alwayes reputed for a Statute shall not be drawne in question, but if it be *Rex ex assensu*, the Commons or Lords omitting the other part, it is voyde. 2. The said Charter having the force of a Statute, is good, without ayd of any other Statute, and although the King in his *Scire facias*, recite another Act for this surplus, the writ shall not abate, 3. The Prince had the Dukedome in Fee, for it is an inheritance, because, 21. E. 3. 41. the Princeesse was indowed, and it is no estate taile because it is not limited of what body it shall come, but onely that they shall be Heires to the black Prince. 4. Against a generall Statute *Nul vel record* shall not be pleaded, for although it be lost, yet the Judges ought to take notice of it, and this is such an one which concernes the Prince, and the Statute of confirmations doth not extend unto it. 1. Because this hath a speciall relation to certeine defects, as *Misnomer*, &c. 2. Patents are made good onely against the King, saving the right of others, therefore the Princes right is saved: In a *Scire facias* the King or Prince may reply, but the most formall way is, for the Attourney to replie, as here he did; No Sonne of the King but his first begotten, shall be Duke of C. although he be Heire apparent to the Crowne.

Calves case, 16. Eliz. Banco regis. fol. 32.

RESolved, that to maintaine an action against an Inkeeper for goods lost, &c. it ought to be a common Inne. 2. He ought to be a Passenger, therefore a Neighbour shall not. 3. An inholder shall not answer for any thing, but that which is *Intra hospitium*, therefore if a Passenger require that his Horse be put to grasse, the inholder shall not answer if he be stolen, otherwise if he require it not. 4. There ought to be a default in the Inholder or his Servants, therefore if a Guest bring one with him who stealeth the goods, the Inholder shall not be charged; otherwise, if the Hostler appoint one with him in his Chamber who doth it. But an Inholder shall not be charged, if he require the Guest to put his goods in a Chamber, and he leaves them in the Court, but it is no excuse to the Inholder that he delivered the Key of the Chamber to the Guest, or that no goods were delivered to him. 5. The Hostler shall answer for Charters if they be stolen, but not if a Guest be beaten, and all this appeares by the Writ, and the words of it.

Paynes Case, 29. Eliz. com. banco. fo. 34.

A Feme, Tenant in taile taketh Baron, and hath issue who is heard to cry, and dyeth, the Feme dyeth without issue, the Husband shall be Tenant by the courtesie, for although the state of the Feme be determined, yet it is *Tacite*, implied in the gift, that every Husband of a Feme inheritable to the said estate, shall have the Land for his life, after the death of the Feme, if he be intituled to be Tenant by the courtesie. If a Feme be delivered of a Monster, this doth

doth not intitle the Husband to be Tenant by the curtesie, otherwise it is, if the issue had humane shape, but is blemished: if a Feme be ripped, and the issue taken out of her Wombe, the Baron shall not be Tenant by the courtesie, otherwise it is, if the issue which they had dyes, and Lands discends after. A man shall not be Tenant by the courtesie, but where his issue may inherit as heire to the Feme, therefore he shall not be of a possession in Law, because there he makes title from the auncestor of the Feme, and not from the Feme.

Barretry, 30. Eliz. fol. 36.

A Common Barretor is a common maintainer of Suites or quarrells, in Courts, or in the Countrey: As first, in disturbance of the peace. Secondly, in taking and keeping of possession, with force or deceit. Thirdly, by false calumnation and sowing of Quarrells, but to indite him of it, it ought not to be, that he hath done so twice or thrice, but that he is a common doer of them.

Griestlies case, 30. Eliz. com. banco. fol. 38.

BY the custome, one is chosen in a Leete to be Constable, who refuseth, and departeth out of the Court, the Steward imposeth a Fine of 5. l. upon him, for which the Bailiffes of the Lord distreine, and he brings a replevin.

1. Resolved, every Judge of record may assess a reasonable fine upon any man who makes contempt or disturbance to the Court, but a Judge who is not of record, cannot.

2. This fine needs not to be assayed, because the Statute of *Mag. Ch.* speakes of Amerciaments, and not

not of Fines, for a fine is imposed by the Court, and an Amerciament by the Jury: therefore the Judgement in an Amerciament is generall, *Quod sit in misericordia*, and after upon estreits directed to the Coroners they are assessed, and the Statute is, that a Noble man shall be Amerced by his Peers, which is not used at this day, because it is reduced to a certainty, (*Viz.*) A Duke to 10. *l.* and others to 5. *l.* but an Amerciament of an Officer of the Court, or he who hath execution of Writs shall be assessed by the Court, so of any who is Judge as Suitors: If a Juror appeare, and is adjourned to a day, of which he makes default, this shall be inquired by his Companions, for he shall be fined to the value of his Land, *per annum*, which the Court cannot know.

33. A distresse may be taken for a fine without custome, or for an Amerciament which is lesse.

Whittinghams Case, 45. *Elix.* fo. 42.

It was resolved, that if there be Lord and Tenant an Infant, and the Infant make a feoffment in fee, and execute the same by livery of seisin by his own hands, and after dye without heires, in this case the Lord shall not have the benefit of the escheate, and the Feoffment is unavoydable.

There be three manner of privities, (*Viz.*) Privity in blood. 2. Privity in estate. 3. Privity in Law. Privities in blood, as heires in blood, privity in estate as joyn tenants. Baron and Feme, Donor, and Donee, Lessor and Lessee, &c. Privities in Law as Lord by escheate, Lord of a Villaine, &c.

If a Lessee for life make a Lease for yeares, and after enter into the Land, and make wast, and the Lessor recover in an Action of wast against the Lessee for life, he shall avoyd the Lease for yeares, made before

the

the wast committed. But if a Lessee for life make a Lease for yeares, and after enter and make a feoffment in fee, the Lessor shall not avoyd the Lease for yeares; and so, if a Tenant make a Lease for yeares, and after is attainted of felony, or dyeth without heire, the Lord by escheate shall not avoyde the tearme. But because the feoffment in the case at barre was executed by Letter of Attourney, it was resolved to be voyd, and the Land escheated to the Queene.

Jehu Webbes Case, 6. Jacobi. com. banco. fo. 45.

THe King grants the office of the Kings Tennis plaies at W. to one, who being disseised brings an assize.

The Patent shall have a reasonable construction, not onely when the King himselve playes, but when any of his Houshold. As if a Commission be made to take Singing-Boys in a Cathedrall Church for the Kings Chappell, those that Sing there for their pleasure, cannot be taken, but such as get their living by it. There were but two manner of assizes at the common Law, assizes *De libero tenemento*, and, *De communia pastura*, but for no other common, but for this onely there is a Writ in the Register. But the Statute of W. 2. c. 25. giveth it, *De proficuo in certo loco capiendo* in lieu of a *Quod permittat*, and although that there offices amongst other things are named, yet an assize lay of an office at the common Law, and although that no Tenant for life may have a *Quod permittat*, yet an assize did lye for him, but that is to be understood of an office of profit, for it lyeth not of an office of charge: Original Writs made by Statute cannot be altered without Statute: In an assize of a new office, it ought to be shewed, what profit be-

belongs to it, but not for an ancient office, because that is sufficiently knowne.

Sym's Case, 6. Jacobi. fol. 31.

TENANT in taile levyeth a fine with warranty, and dyeth, the warranty discends upon the issue of him in the remainder, inheritable to the taile, and another, the issue in taile brings a formedon, and is barred for all. for the warranty is intire, and barreth every one upon whom it discends, of all his right: as if one seised of three acres maketh a feoffment of one with warranty, and dyes, having issue two Daughters who make partition, the Mother purchaseth the part of one, & brings dower against the feoffee who Vouches the Daughters, shee shall recover all the other acre of the other Daughter, if Tenant by the curtesie make a feoffment with warranty, and dyes, and his Sonne heire of the Feme recovers, and assers discends after, the feoffee shall have a *Scire facias*, to have the Land first recovered, by the Statute of Glouc. c. 3. But if assers descend to the Heire in taile, bound with a lineall warranty, after recovery in formedon, the Feoffee shall have a *Scire facias*, to have the assers, for otherwise if the recoverer alien the assers, the issue of him will recover the Land in taile againe; but in these cases the discontinuee ought to confesse the title of the Demandant, and pray, that if assers descend after, they may descend unto him, for if he plead a warranty and assers, this is peremptory unto him, if it be found that assers did not descend; for the Statute is, that a *Scire facias* shall issue out of the rolls of the Justices, and in this case there is no ground for the *Scire facias* in the Record, but in this case if the issue in taile pleads no assers, and assers are found, but not to the value, the Tenant shall have

have a *Scire facias* to recover the assets discended after, for that false plea of the Vouchee. Warranty and estoppell discend upon the Heire generall, and warranty barreth although that he upon whom it discends, claimeth not by him that made it, but so doth not an estoppell, but estoppells with recompence binde the right of one who claimeth not by him that made it.

Roger, Earle of Rutlands Case, 6, Jacobi. fo. 55.

THE King grants the pannage and herbage of a Park to M. for life, and reciting this, grants it to the Earle of Rutland for his life.

1. Resolved, the King hath three manner of inheritances. 1. Some which he cannot exercise himselfe, and cannot grant them in reversion or remainder, as Corodies and Churches of which he is Patron. 2. Others which he cannot exercise himselfe, but may grant them in reversion or remainder, as offices. 3. Others which he may exercise himselfe, and may grant as Lands, Houses, &c.

2. The King here is not deceived, for when he reciteth here that M had for life, and grants for life, this inureth, as by Law it may, that is as a grant in reversion.

3. In this case the grant to the Earle shall commence after the determination of the estate of M. and if the King grants Land to one and his Heires, *Habendum* to him and h's Assignes, it is good, and the *Habendum* shall be rejected for the honour of the King. See the Lord Chandos case in the sixth Booke, and when a Charter of the King may be taken to two intents good, in many cases it shall be taken to such intent as is most beneficiall for the King, but if it may be taken to one intent good, and to another void,

void, then for the honour of the King, and benefit of the Subject, then it shall be taken so that it may take effect.

Beechers Case, 6. Jacobi. fo. 38.

B. Plaintiffe in Debt, *Se retraxit* by attourney, and by the judgement is not amerced, he brings error. 1. Resolved, a *Retraxit* ought to be in proper person, for at the common Law every one who appeared ought to come in proper person and make his attorney after, by license of the Court, but if it be without writ, he cannot without a writ of *Attornato faciendo*: In cases where one may make an attorney, but for contempt is bound to appeare in person, if he appeare by attourney, this is not error, because the Court may dispense wth the contempt, otherwise where he cannot appeare by Law by attorney, as here, for if it appeare by attorney, this is error. 2. B. ought to be amerced if upon a Nonsuite, a *Fortiori* upon a *Retraxit*, and although it is for his advantage, yet he may assigne it for error, because the judgement is not perfect, and because it is for the advantage of the King, and it shall not be amended because the act of the Court. 3. Where one disclaimes he shall not have a Writ of error, because he hath confessed that he had no right, otherwise it is upon a *Retraxit*, for this is but a barre of the action, a *fortiori* here, where it was void, done by an attorney, a *Retraxit* ought to be when the party is supposed to be present, therefore it shall not be when he imparleth.

Swaynes

Swaynes Case. 6. Jac. fol. 63.

1. **R**Esolved, the King grants a Mannor for life except Timber Trees, the Lessees grant copyhold, the Grantees may shrowde Timber Trees because they come in by custome, *Paramount* the exception. 2. If Copyholders prescribe to take profit in any part of the Mannor, if the Lord aliens it, a Copy-holder admitted after shall have it, because he is in paramount the severance, but he shall prescribe and plead specially, that is, untill such a time, (*Viz.*) Before the severance *Talis habebatur, &c. consuevudo, &c.* and then shew the severance.

Sir William Fosters Case, 6. Jac. fol. 64.

CF. made a feoffment 4. E. 6. reserving a rent charge, which rent descends to T. F. who dyes intestate, his Administrators avow for it, and alledge no seisin within 40. yeares yet good, for the Statute of 32. H. 8. c. 3. that none shall avow for rent if he had not seisin within 40. yeares, is to be intended when it was necessary to alledge, as upon rent betwixt my Lord and Tenant, for this may be had by incroachment, and perhaps the commencement of the Seigniorie was before time of memory, but where rent is by deede or reservation, as here, or upon an estate taile, the seisin is not materiall, for the deed or reservation is the Title and incroachment shall not hurt, and they shall not have a *Ne injuste vexes*, but shall avoide it in an ayowry, and *Magna Charta, c. 10. Quod nullus distringatur ad faciendum majus servitium, &c.* doth nor extend to donee in taile, Lessee for life, &c. but is intended between very Lord and very Tenant.

Lovedayes

Lovedayes Case, 6. Jac. fo. 63.

IF a Jury who appeareth to try a certaine issue, give a verdict which is accepted, be it perfect or imperfect, they are discharged, and shall not trie the same issue, upon a new *Nisi prius*, but a *Venire facias de novo* shall issue, otherwise it is of the Recognitors of an assize, they shall trie all the issue, because they are not to trie any certaine issue, and because they come in upon an Originall, the Court will not award a new Originall, but the Plaintiffe shall have a Certificate of assize to trie the imperfections, the Plaintiffe sueth a *Venire facias* against diverse, the Sherisse returneth no Writ, the Plaintiffe shall not have severall *Venire facias* after, for he cannot vary from the first,

Crogates Case, 6. Jacobi. fol. 46.

THE Defendant pleads in barre to trespassse that the B. of N. leased by Copy to W. M. to which Copyhold there is common in B. and justifieth as Servant to the said W. the Plaintiffe replies, *De injuria sua propria, &c.* this is an intussufficient replication, for, *De injuria &c.* hath reference to all the plea in barre, and not to the Commandement, *Ergo*, if the Defendant in false Imprisonment justifie, for that a *Capias* was awarded to the Sherisse, who made a warrant to him to take the Plaintiffe; *De injuria, &c.* is no plea, because it referreth to all, and so Record shall be tried by Jury, but he shall traverse the Warrant, which is matter in fact, but this had been a good plea, if the proceeding be in a Court, which is not of Record. 2. *De injuria, &c.* is to be pleaded, where the plea is matter of excuse, and not where he claims
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an interest in his own right, or in the right of his Master, for there he shall traverse the Commandment. 3. Where authority is derived from the Plaintiff himselfe, or is given by Law, as to see if waite the Plaintiffe ought to answer to it, although no interest be claimed, and he shall not plead *De injuria*, &c. 4. If this plea be admitted here, all parts of the plea in barre shall be tried, and the issue will be full of multiplicity.

Trollops Case, 6. Jacobi. fo. 68.

THE Defendant in error pleads excommunication, &c. and sheweth the Certificat of the Vicar generall, *de D.* the words of which were, *Universis clericis & literatis per totam diocesim D.* the Plaintiffe pleads the generall pardon 3. Jac.

1. Resolved, the official cannot certifie excommunication, for none shall doe that, but he to whom the Court may Write to assoile the party, as the Bishop and Chancellour of C. or O. and for that, if a Bishop certifie and dye before the returne of the Writ, it shall not be received, but the Successor shall doe it, and one Bishop shall not certifie an Excommunication made by a Bishop in another Court, but a Bishop after Election before Consecration may, and so may the Vicar generall, if it appeare that the Bishop is in *Remotis agendis*. 2. The Certificat is insufficient because by the particular direction to the Clerks of D. the Kings Court and all others are excluded, and so a protection in one Court serveth not in another, and Excommunication is such a thing, as the Court of the King hath consufance, and therefore the Suite and the Cause are to be exprest in the Certificat, that the Kings Court may judge of the sufficiency, and if it be insufficient (as if a Bishop cer-

certifie an excommunication made by himselfe in his owne Cause) the Court may write to absolve him. If the Certificat had been good, the point was, whether the generall pardon dischargeth an excommunication or not.

Whitlocks Case, 6. Jacobi. fol. 69.

A Reversioner upon an estate for life levyes a fine to the use of himselfe, untill Marriage of his Son, and then to the use of himselfe for life, with power to make Leases, so that they exceede not 21. yeares, or three lives, reserving the ancient rent, the remainder to his Sonne in fee, the Sonne is married, the Father maketh a Lease for 99. yeares, if two shall so long live, reserving rent to him, his heires, and the reversioners, this is a good Lease.

1. Resolved, he had pursued his authority, for if he had a particular power to make Leases for 21. yeares, or three lives, he cannot make leases determinable upon lives, but having a generall power to make Leases, so that they doe not exceed 21. yeares, or three lives, he may.

2. The rent reserved goeth to the Sonne, although that he who reserved it had but for life, because the Lease for yeares hath no being out of the Lease for life, but out of the Fee, and in judgement of Law proceedeth both in construction upon the limitation of uses, but the most safe way here had beene to reserve the rent generally, and left it to the distribution of the Law.

Greenelyes Case, 7. Jacob. fo. 71.

Baron and Feme, Tenants in speciall taile, the Baron infeoffeth P. G. and dyeth, the Feme dyes, the

the Sonne enters, and Leaseeth to the Plaintiffe.

1. Resolved, if Baron joyntenant in speciall taile with his Wife, had made a Feoffement, or had been disseised, at the common ley, and dyed, and the Feme before entry dyed, this is a discontinuance to the Sonne, because he cannot enter as Heire to both, but if the Feme enter, the discontinuance is purged.

2. The estate which the Feme had joyntly with her Baron is within the purview of the Statute of 22. H. 8. c. 20. That no fine levied by the Baron sole of Lands of the Feme shall hurt her, and within the Statute of West. 2. c. 2.

3. The entry of the Sonne is lawfull, although he claimes not as Heire to the Feme, as the Statute speakes, but as heire to both, because he is within these words, or to such as have right by the death of such Wife, and this is to be intended of discontinuances made by the Baron, and not of a rightfull barre of the issue, for they cannot avoide it, and the Statute is that they may enter, which they cannot doe where they are barred: and if the Feme enter within 5. yeares, as shee may after a Fine levied by the Baron, this doth not take away the future barre of the issue, and if shee enters not within 5. yeares, shee also is barred: Baron, tenant in taile, the remainder to the Feme in taile makes a feoffement, the Feme may enter after his death, by this Statute, but if the Baron suffer a recovery shee shall not enter, in the Case at barre the son may have a *Formedon* at the common Law. and where before this Statute a *Cui in vita*, or *Sur cui in vita* did lye, entry is given by this Statute, and not otherwise.

The Lord Staffords Case, 7. Jacobi. fo. 73.

THE Queene reversioner upon an estate taile grants the reversion to T. T. in taile upon condition, is to have *Prædictam reversionem* in fee, the condition is performed, the Lord Stafford Tenant in taile levith a fine, his issue is barred. 1. Resolved, that a condition of accruer may be annexed to a thing which lyeth in grant, and to an estate taile, as if Lessee for life be the remainder for life, with condition of accruer to the first, this is good, and yet no Merger of estate. 4. things are requisit to an accruer. 1. A particular estate as the Foundation, *Ergo*, a Lease at will shall not be. 2. The estate ought to continue in the Grantee untill accruer, therefore if the Grantee alien and purchase the condition is Tolled, but *Quære* if the Tenant alien upon condition which is broken, if the fee shall accrew, but grantee may grant part of his estate, as if Lessee for life make a Lease for yeares, he may performe the condition after, so may Tenant in speciall taile, after he is become tenant in taile after possibility, &c. so may the surviving joyntenant and the heire of Tenant in taile. An instant is sufficient to support an accruer, as if the condition be, if the Lessee be ousted, *Eo instante*, that the ouster is the fee accrueth, but if Lessee for yeares accept a confirmation for life, the condition is gone: but it is not necessary, that the estate of the grantor or Lessor continue, because by his own act he shall not defeate his grant. 3. It ought to vest at the time of the condition performed or never, and for that, rather that it shall not vest at this time by performance of the condition, the fee without office or other ceremony shall be divested out of the King. 4. It is necessary that the particular estate and the condition be in one deede,

deede, or two deeds delivered at the same time, for in Law they are but one grant, and by the condition performed, he had fee from the delivery.

Resolved, *Prædict. reversionem* signifies the reversion which the Queene had, *Viz.* That which depends upon both the estates taile, and so was the intent; also shee granted, *Omnia præmissa*, which maketh it cleere. Resolved also, that these words Will and Declare, doe amount to a grant, and are so used in Patents of Liberties, and things to take effect in *Future*. Tenant in taile, the remainder in taile, the remainder to the King, Tenant in taile suffers a recovery, this doth not barre the remainder in taile, because the issue in taile is not barred, and therefore the reversions and remainders in taile are preserved by the Statute of 34. H. 8. c. 20.

Lastly, Resolved, if the reversion in fee had remained in the Crowne, that the fine levied by Ed: Lord Stafford the Father, had not barred the Lord that now is. *Nothys Case, 31. Eliz. com. banco.*

Wiat Wiels Case, 7. Jacobi. fol. 78.

W. W. seised of Land, to which he had common appurtenant, aliens 5. acres to one who in replevin counts, that he and those, whose estate he had in the said 5. acres, have had common there, &c. and good. 1. Resolved, although by purchase of part of the Land in which, &c. the common appurtenant is destroyed in all, yet it is not so by alienation of part of the Land to which, but all remains without damage to the Tenant of the Land. 2. That the pleading of it was sufficient.

Vinyors Case, 7. Jacobi. fol. 80.

ONE was bound to stand to the award of W. R. and revokes the submission, the Obligee brings Debr. 1. Resolved, the Countermand is good, for an authority Countermandable by the Law, cannot by any way bee made irrevocable. 2. Although that the Plaintiffe doth not show, that the Defendant had given notice to the arbitrator, yet it is good because this is implied, for without notice the revocation is voyd. 3. The Obligation by the Countermand is forfeited, because he doth not stand to, &c. when he Countermands it. 2. By his owne act he had made the condition impassible, *Ergo*, the Obligation is single, if one bindes himselfe to give License to carry Wood, &c. for a certaine time, if he give it, and disturbe him, the Obligation is forfeited.

Sir Richard Pexhalls Case, 7. Jacobi. fol. 83.

Sir R. P. seised of Lands, part whereof is houlden in *Capite*, deviseth 100. Sheepe, 10. Bullocks, and 10. *l.* quarterly, to one with clause of distresse; and that the Grantee shall hold his Courts for his life, for rent arreare for two yeares, the grantee avoweth. 1. Resolved, a devise of rent out of all is good, and taketh effect out of two parts, and as to the third is voyd. 2. The grantee shall have an estate for life in the rent, and so he shall if it be granted by Deede, also by the Intent of the Devisor it appeares, that the Grantee shall hold Courts, and have 10. *l.* per annum, for his wages, and quarterly here had relation to rent onely, because the word *Et*, disjoyneth it from Sheepe and Bullocks, and judgement given for the Avowant.

Buckmers Case, 7. Jac. fol. 86.

T. B. gave a House in Gavellkinde to M. his Eldest Daughter in taile, the remainder of one Moity to J. a second Daughter in taile, the remainder of the other Moity to K. a third Daughter in taile, with crosse remainders to J. and K. M. discontinueth and dyeth without issue, J. dyeth without issue, K. dyeth, and her issue brings a Formedon in the remainder, and good, although severall remainders, for they depend upon one estate, and commence by gift at one time: In actions reall, in which title is expressed, a man shall not have one Writ for Lands, to which he had severall Titles, as in escheate, cessavit, Writ of Mesne, &c. but he may have a Writ of ward of Land onely, although it be by severall Tenures, nor one Formedon upon two distinct gifts, where the foundation is severall, but he shall have it if there be one gift, although it take effect at severall times, because the foundation was joynt and single, as upon a gift in taile, to Brother and Sister, who dye without issue, or if the Brother dye without issue, and the Sister dye having issue, who dyes without issue, he to whom the remainder limited shall have one formedon, although it vest at severall times, so in an estate taile to Father and Sonne, and so here: In actions reall, founded upon Torte, a man shall have one Writ to recover Lands, to which he had severall Titles, as in an assize, a Writ of entry, &c. but in a Writ of entry upon disseisin made to my Mother, and her Sister Coperceners, because there title is in the Writ, it appeareth he ought to have severall actions; but in personall actions, one may comprehend severall torts, and causes of actions, as trespassse for trespassse made at severall dayes and places, wast upon severall
Leases,

Leases, and so of Debt. *Nota*, if a remainder be executed, issue in remainder shall not have a formedon in remainder, but in the descender, and Count of an immediate gift, but if there be a Lease for life to one, the remainder in taile to A. the remainder in taile to B. A. dyes without issue, if B. be chased to his formedon, he shall not count of an immediate remainder, but shall shew the first remainder to A. and that he is dead without issue. 2. In formedon in the remainder or reverter, omission of issue inheritable in the pedigree of the demandant, abates the Writ, but not upon the part of the particular Tenant. 3. The Demandant must make mention of the Sonne who survived the Father, to which Sonne the Land descended, but was not seised by force of the taile, but he shall name him Sonne, but not heire. 4. The Demandant in a formedon in the Descender must make himselfe heire to him that was last seised, and he to the Donee. Note here, because K. was never seised, the Writ shall say *Remanere*, not *descendere*, and the Writ was, *Remansit jus*, because a discontinuance, otherwise it should be *Tenementa remanserunt*.

Fraunces Case, 7. *Jac.* fol. 89.

THE Plaintiffe pleads in barre of avowry, that R. F. devised to I. his Sonne, who leased to him, the avowant replyeth, that after the devise, R. F. made a Feoffement to the use of the said I. upon condition, that he shall suffer his Executors to take away his goods, and the estate limited to him was for sixty yeares, if he should so long live, with diverse remainders over, and that after the death of F. I. hindered the Executors, to carry away the goods, whereupon T. in remainder entered, and judgement given for the Plaintiffe.

1. Resolv. although the condition be taken strictly, the uses to I. onely, and to his heires, are onely avoyded by it. 2. A disturbance by paroll is no Breach of the condition, ~~and because the avowry did not shew any disturbance, his replication was voyd.~~ 3. I. ought to have notice of the condition being a Stranger to it, or otherwise he cannot breake it, as a Copy-holder shall not forfeite for deniall of rent, to him to whose use a Mannor is transferred before notice, but he who bindes himselfe to doe any thing must take notice at his perill, because he hath taken it upon him. 4. Although that the Title which the Plaintiffe had made in barre to the avowry, be destroyed, yet he shall have judgement, because his count is good, and another Title (that is, to have the Land for sixty yeares, by force of the uses declared upon the feoffement) is given unto him by the Replication, although that the Title which he made for himselfe be destroyed, yet the Court must adjudge upon all the record, and judgement was entered for him accordingly.

Edward Foxes Case, 7. Jacobi. fol. 93.

A Reverfioner upon a Lease for life, the remainder for life in consideration of 50. *l.* demiseth, granteth, &c. his reversion for 99. yeares rendering rent, this is a bargaine and sale, and there needs no attornment, for the words of bargaine and sale are not necessary, if there are words which tantamount, as if at the common Law one had sould his Land, an use had been raised to the Vendee, because their intent so appeared, so here, but if it appeare, that their intent was to passe it at the common Law, as if a Letter of Attorney be made to make livery, the use had not risen, and here appeareth their intent to passe it

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as a bargain and sale, because rent is reserved presently, therefore it is reason that he shall have the rents of the particular Tenants presently, which cannot be if it passe not by bargain and sale, and inrollment is not necessary, because a tearme for yeares onely passeth in this case, and no freehold. See Sir Rowland Heywards Case, 2. Report. fo. 35.

Matthew Mannings Case, 7. Jacobi. fo. 94.

LEssee for yeares is bound in 200. Markes to W. C. and deviseth to his Wife for life, and after her death to M. M. and makes his Wife Executrix, who agrees and dyeth intestate. M. M. enters, and takes administration of the goods, not administered. W. C. brings Debt against him. Resolved, that M. M. takes by Executory devise, and not as a remainder, and the estate limited to him in construction, precedeth the limitation to the Wife, as if he had devised, that if the Wife die within the terme, that then M. M. shall have the residue, and also devised it to his Wife for life. 2. This case is most strong, because a Chattell which may vest and re-vest at pleasure of the Devisor, without mischief to the *Præcipe*. 3. A devise of the Terme, and Occupation thereof, all one. (*Viz.*) So many yeares as the Feme shall live, the remainder to M. M. 4. After the Executrix had agreed, the first devisee cannot barre the Executory devise. 5. A man may devise an estate, which he cannot convey by act executed as to his Executors, untill his Debts shall be paid, the remainder over, they have a Chattell determinable, upon payment of the Debts, which cannot be at the common Law. If a Sheriffe sell a Terme upon a *Fieri facias*, and judgement is reversed, the sale shall stand, otherwise none will buy any thing upon Execution,

cution, and judgement was given for the Plaintiffe, and affirmed in Error.

Baspoles Case, 7. Jac. fo. 97.

F. And B. put themselves in Arbitrament for all demands, Suites, so as the aforesaid award be delivered in Writing, &c. at the Feast of Saint James, the Arbitrator awards that B. shall pay 22. *l.* to F. B. refuseth to pay, F. brings Debt upon the bond to stand to the award, and good: 1. Resolved, that the award was of both parts, for the one was to pay money, and the other to discharge the Debt. 2. Resolved, that whereas the Plaintiffe saith, that the award was made, *De premissis*, which untill the contrary be shewed shall be intended of all: when the submission is generall, an award of part is good, for otherwise the parties may conceale one thing, and make the award void; but if it be of diverse things in speciall, *Ita quod arbitrium fiat de premissis*, an award of part is voyd, but good without such conclusion, so if two of one part, and one of the other part, submit themselves, arbitrament between one of the one part, and another of the other part is good.

Sir Richard Lechfords Case, fo. 99.

Tenant by Copy in fee, (where there is a custome that the heire after the death of his auncestor, within three Courts and Proclamations made, shall be barred if he claimed not) dyes, his heire beyond the Seas untill three Courts and Proclamations passe, and returnes, and claimeh to be admitted, he is not barred no more then by Non-claime upon a fine, *Ergo*, this custome shall be construed, if he be within the realm of full age, &c. but if he goe over the Seas
af-

after the death of his ancestor, he shall be barred, as in case of a fine. 2. Resolved, although he was not in the Kings service, this is not to the purpose, because by intendment he cannot have notice; But a *Mulier puisne*, over the Seas shall be barred, by the dying, seised of the Bastard *Eigne*, for the right of the *Mulier* is barred, and the Bastard is made *Mulier*, although that a discent of the disseisor of a rent or thing which lyeth in grant barreth not the disseisee, yet if a Bastard *eigne*, dye seised of it, this barres the *Mulier*. If two Daughters, whereof one is a Bastard, *eigne*, enters and dyes, before or after partition, the *Mulier* is barred: Otherwise, if two Daughters, and one of them had no collour of partition, if Bastard *eigne* dye in the life of his Father, having issue, who enters after the death of the Father, and dyeth seised, having issue. *Quare*, if the *Mulier* be barred, *Mulier* is barred by discent, before entry of the Sonne of the Bastard, *eigne*, as if issue be in *Ventre sa mere*, or the Wife of the Bastard indowed.

John Talbots Case. 7. Jaco. in Second deliverance,
fo. 102.

Lord and Tenant by Homage, Fealty, and Herriot service of 50. acres, the Tenant infeoffeth the Lord of three acres, and after infeoffeth the Plaintiffs father of three other acres, parcell, &c. who dyeth, the Lord distreinereth for Herriot, the Plaintiffe brings replevin, and good. 1. All intire services to tender an intire Chattrell of profit, or pleasure, by alienation of part shall be multiplied, and by purchase of part by the Lord, extinct. 2. Personall services for the publique good, which are intire, as Chivalry, Homage, and Fealty, shall be multiplied, and not extinct. 3. Other personall services, as Butler, Sewer,

er, &c. shall not be multiplied, but shall be extinct. So of a personall office, and mannuall labour. 2. There is no diversity betweene an intire Chattell, be it annuall or not, as if it be to render a Horse every five yeare by purchase of part, it shall be extinct. 3. If the Father of the Plaintiffe had been first infeoffed, and then the Lord, the Herriot had remained, because there the Father of the Plaintiffe, held by a severall Herriot before the Lord was infeoffed. 4. But Herriot custome, by purchase of part is not extinct.

Doctor Bonhams Case, 7. Jacobi. fo. 114.

THe President and Censors of the Colledge of Physicians in L. by colour of Letters Patents of H. 8. and the Statutes of 14. H. 8. and 1. Mar. fined and Imprisoned Doctor Bonham, for practising of Physicke in L. without their allowance, (the fine to be paid to them,) and also for contempt made to the Colledge, whereupon he brings false imprisonment, and adjudged for the Plaintiffe.

1. Whither a Doctor of one Univerfity or other, be within the act.

2. Admitting that he is, whither he be within the exception in 14. H. 8. Justice Dnniel held, that such a Doctor was not within the body of the Act, and if he were, yet he is within the Exception, but *Warburton contra*, for both points: *Cooke* spake not to them, but they all agreed that the Action was maintainable for two other points.

1. Whither the Censors have power to fine and imprison.

2. Admitting that if they have pursued it. The Censors have no power in this case to imprison the Defendant, for they have no power to punish by fine and Imprisonment, those who practise without their
li-

license, but those practisers who misadminister physick.

1. Because the clause that none shall practise without their License, and the clause which giveth to them the said power, are distinct clauses.

2. The first clause imposeth another penalty, and §. 1. every moneth that he practiseth, but leaveth the evill administration of Physick to be punished, by the Colledge, because this is uncerteine.

3. To make one punishable by the first Branch, he ought to practise by a moneth, otherwise it is by the second.

4. By this way they shall be both Judges and parties in one cause.

5. If Doctor B. shall be punished by §. 1. by the moneth, and also at their pleasure, he will be often punished for one offence. 2. Admitting that they had power, yet they have not pursued it. 1. Because the President, who hath no power, joyned with them. 2. The fine was imposed for not appearing before the President and Censors, and the President had no power. 3. Halfe of the fine belongs to the King, and here all is to be paid to them. 4. The Imprisonment ought to be presently, as upon the Statute of W. 2. cap. 12. 5. Their authority being by Patent and Statute, their proceedings ought not to be by Paroll, and the rather, because they claime authority to fine and imprison.

6. It shall be taken strict, because against the liberty of the Subject, therefore before 1. Mar. the Goaler was not bound to receive them, and this doth not enlarge their power, but that the Goaler shall forfeite double the Amerciament, if he refuse. Admitting the replication voyd, although that the Colledge demurre upon it, yet the Plaintiffe shall have judgement, because in the barre, the Defendants have shewed that they have imprisoned him with-

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without cause, for upon all the pleading, it appeareth, that he had cause of action; but if a barre be insufficient, and by the replication it appeares, that the Plaintiffe had no cause of Action, he shall not have judgement: A Count may be made good by barre, and a barre by replication in matters of circumstance, but not of substance. See there seaven things observed by *Cooke*, for the better direction of the President and Comminalty of the said Colledge hereafter.

The Case of the City of London, 7. Jac. fol. 121.

IT is a good custome within a Citie that a Forreinor within the said Citie shall not sell things by retaile, and it is good also upon paine of 5. l. but it is not good by Charter, therefore Cities which are incorporate within time of memory cannot have such priviledges without Parliament: so of a custome, that goods forreigne bought and forreigne sould, shall be forfeited: So one may prescribe to have a Bake-house in a Towne, and that no other shall have one there, and the Statutes which provide that every one may sell in retaile, or in grosse, extend onely to Merchands, aliens and demisens, who export and import things vendible. Three inconveniences by confluence of people to *London*, &c.

The Case of Therford Schoole, fol. 130. 8. Jac.

LAnds of the yearely value of 35. l. in Ao. 9. El. was devised by the will of *Thomas Fulmerston*, to certeine persons and their Heires for maintaenance of a Preacher, four dayes in the yeare, of the Master and Usher of a free Grammar-Schoole, and foure poore People, *Viz.* Two men and two women, and

a speciall distribution was made by the Testator, amongst them of the said Revennues, (*Viz.*) To the Preacher one certaine Summe, to the School-Master, and Usher other certaine Summes, and to the Poore, &c. amounting in *Toto* to 35. *l. per annum*, which was the annuall profits of the Land at that time, and after, the Lands became of a greater value, (*Viz.*) 100. *l. per annum*. Question, whither the Preacher, School-master, Usher, and Poore, should have onely the Summes appointed to them by the Founder, or that the Revennew and profits of the Land shall be employed to the increase of the Stipends of the Preacher, School-master, &c. or in what manner the surplusage should be employed. And it was resolved, that the Revennew and profit of the said Land should be employed to the increase of the Stipend of the Preacher, School Master, Usher, and Poore; and if any surplusage remaine, the same to be expended to the maintainance of a greater number of Poor, &c. and nothing thereof to be converted to the Devises, or their owne use, and this resolution is grounded upon apparent reason, for if the Lands should decrease in value, the Preacher, School-Master, &c. should loose, so when the Lands doe increase in value, (*Pari ratione*) they should gaine, *Vide Statutum, Templariorum ita semper quod pia & celeberrima voluntas donatorum in omnibus teneatur & perpetuo sanctissime perseveret.*

Turnors Case, 8. Jac. com. banco. fol. 132.

IN Debt against an Administrator he pleads recoveries had against him in the Court of C. which amounts to all which he had in his hands, the Plaintiffe replyeth, that one is by Covin, and that the other recoveror had accepted a composition, and that the

the Defendant delayed to accept a Release to defraud the Plaintiffe : adjudged for the Plaintiffe. 1. Although that two recoveries are without covin, yet the composition so operates, that nothing shall be accounted administred, but onely so much as he hath paid by composition, and the converting of any part to his own use, and the deferring to accept a Release, is against the office of an Executor, and shall not aide him. 2. The barre is insufficient because he hath not shewed that the Court of C. had power to hold plea of debt. 2. Because he hath not shewed that the Testator was bound in an Obligation, and if it were onely upon contract, the Administrators were not chargeable in Debt. 3. Be the replication evill, yet because the Barre is insufficient, the Plaintiffe shall have judgement, because he had not shewed any thing against himselfe, but if it appeare by the replication that he had no cause of Action, he shall be barred.

Mary Shipleys Case, 8. Jac. fol. 134.

AN action of Debt against an Executor of 200. *l.* the Defendant pleaded, *Plene administravit*, the Plaintiffe replies, that the Executor had assets, the Jury found assets to the value of 172. *l.* judgement was given to recover the whole Debt of 200. *l.* and damages, and costs of the goods of the Testator. *S. &c. Et si non*, then the damages of the proper goods of the Defendant.

Sir John Nedhams Case, 8. Jacobi, Communi Banco, fol. 135.

IN debt as administratrix upon administration committed by the Bishop of R. the Defendant pleads ad-

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administration committed unto him by the Deane and Chapter of C. *sede vacante*, because the Intestate had *bona notabilia*, &c. the Plaintiffe replies that that administration was repealed: *adi.* for the Plaintiffe.

1. *Resol.* Because it is not shewed that the Intestate had *bona notabilia*, &c. it shall be intended that he had not, and yet the administration is not voyde, but voydable.

2. Before the repeale of administration committed by the Metropolitan, the inferior Ordinary may commit administration, because this is by the repeale declared voyd, *ab initio*, and an administration is but an authority which may well commence *in futuro*.

3. The committing of administration to the obligor hath not extinguished the debt, because it is in anothers right, otherwise it is, if the obligee himselfe make the Obligor his Executor, because this is his own act, *De bonis defuncti iura dispositio*. 1. *Necessitatis, ut funeralia*. 2. *Utilitatis*, that every one shall be payd in due order. 3. *Voluntatis*, as Legacies.

Sir Francis Barringtons Case, 8. Jacobi, Communi Banco, fol. 136.

THE Lord R. granted wood within a Forrest, in which the Plaintiffe had common, which grant is confirmed by Statute, the grantee cuts wood, and inclose it, the commoner shall loose his common for seven yeares.

1. *Resol.* The grantee had an inheritance to take in another soyle, and the soyle is to the Lord R.

2. Although the grantee had not the inheritance, yet the Statute extends to him, and he may inclose, for the Statute is, or any other person to whom wood is sould, 3. 22. E. 4. cap. 7. extends to wood which
one

one had in severalty, and not where another had common there; for at the common Law, one who had wood in a Forrest cannot inclose against a commoner, but if it be his severall wood, he might inclose, *parvo fossato, &c.* for three yeares.

4. The said Statute is as a conveyance between the King and his Subjects, which taketh not away the right of third persons, as the commoner here is.

5. In the said Statute there is a clause that he may inclose without suing to the King, or other owner, so that power is given against them, and not against a commoner. Beasts of Forrest are Hart, Hinde, Hare, wilde Boare, and Wolfe: of chase, Buck, Doe, Fox, Martin, and Roe.

6. By the Statute of 35. *H. 8. cap. 17.* he is barred of his common, which provideth that no Beasts shall be suffered to come there for seven yeares.

7. The Statutes which concerne Forrests are generall, because they concerne the King, and the Court shall take notice of them.

Doctor Druries Case, 8. Jacob. fol. 141.

DOCTOR Drury recovers against B. who is outlawed, and taken by *Capias ut legatum*, and escapeth, the Utlary is reversed, Doctor Drury sueth execution, B. brings an *Audita querela*, adjudged that it lyeth not. It was resolved, that if A. be in execution at the suite of B. upon an erroneous judgement, and after escape, and after the judgement is reversed by a Writ of error, the action against the Sheriffe is extinct, for hee may plead *Nul tiel record*: But untill it be reversed, it remaines in force, be it never so erroneous; and if the partie have judgement and execution upon the escape against the Sheriffe or Goaler, and after the first judgement is reversed, yet for as much

much as judgement upon this collaterall thing is executed it shall remaine in force, notwithstanding the reversall of the first, 7. H. 6. 4. Yet it seemeth to me, he may have remedy by *Audita querela*, for that the ground and cause of the collaterall action is disproved by the reversall of the first judgement, a difference between meane acts, compulsatory, and voluntary, and betweene a recovery by eigne title, and reversall of a recovery.

Davenport's Case, 8. Jacobi, fol. 144

TENANT for yeares of an advowson granteth *proximam advocacionem & donationem, si eadem Ecclesia contingerit vacua fore durante termino, &c.* And afterward surrenders his terme, yet if the prochein avoidance be within the tearme, the grant is good, for yeares cannot determine, but the effluxion of time, and the Law implyes a limitation, if the Church doe come voyd, during the tearme: For *expressio eorum qua tacite insunt nihil operatur*: Likewise if a Lessee for yeares grant a rent charge, and after surrender, yet for the benefit of the grantee the tearme hath continuance, although in *rei veritate*, it is determined, and the grantor himselfe shall not derogate from his owne grant to make it voyd at his pleasure.

The six Carpenters Case, 8. Jacobi, fol. 146.

IT was resolved when entry, authority, or license, is given to any by the Law, and he abuse the same, in this case hee shall be a trespassor *ab initio*: But where entry, authority, or license, is given by the party, and he abuse the same, there he shall be punished for this abuse, but he shall not be said to be a trespassor *ab initio*; and the diversity is this, because

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the Law doth iudge by the act subsequent, *quo animo*, or so, what intent he enters, *actum exteriora iudicant interiora secreta*: But when the party giveth authority, &c. to do a thing, he cannot for any subsequent cause punish the same.

1. The Law doth give authority of entry into a common Inn, Tavern, &c.

2. The Lord to enter and distreine.

3. To an owner of the Soyle to enter and distreine damage feasant.

4. To him in reversion to view if waste be committed.

5. To a Commoner to enter into his Land to view his Catell, &c.

But if hee that enters into an Inne, &c. doe trespassse, or take any thing away, or if the Lord that distreines for rent, or owner for damage feasant, labour, or kill the distresse, or he that enters to view waste, bruse the house, or stay there all night, or if a Commoner sell Tymber; in these cases and such like, the Law judgeth that he entred for the same purpose; and therefore the act that doth demonstrate this, is, to be a Trespasse, and he shall be a Trespassor *ab initio*: It was Resolved, that the non-season, or not doing of a thing is not any Trespasse, where the Law giveth Licence or authority to enter, (*viz.*) to deny to pay for Wine in a Tavern, is not a Trespasse, but the Taverner may have an action of debt, 12, E.4.8. If a Taylor overvalue the making of a garment, and the necessities thereunto, he shall not have an action of debt for his owne values, unlesse it be specially agreed upon before, but he may deteine the Garment, untill he be payd or satisfied; and if the party sue for the same: the Jury shall set downe the value, and the Taylor shall have no more, but be barred for the rest: Likewise an

an Officer may deteine an Horse, &c. Tender of sufficient amends for damage felant before the distresse taken, is good, and the taking of a distresse afterwards is wrong; tender after the taking of a distresse, and before the impounding, maketh the deteining wrong, but not the taking; but tender after the impounding cometh too late, for then the cause is put to the tryall of the Law.

Edward Althams Case, 8 Jacobi. fol. 150. In Dower and pleaded.

N. Seised in fee of Lands in W. and G. deviseth the Lands in G. to his younger Son for life; it was agreed betweene the eldest Son and the Widow of T. N. that she should release her dower in W. she releaseth unto him, *Omnes actiones demand, &c. necnon omnem dotem & titulum dotis, &c. de aliquibus terris in W.* both the Sons dye, she brings dowre of the Lands in G. and judgement given for the demandant.

1. *Resol.* A Release of all actions to him in the reversion barreth not dowre, because she had no cause of action against him, but against the Tenant of the free hold, but a release of all her right to him in the reversion extinguisheth dowre, for a release of right beareth actions, but a release of actions barreth not a right, if there be other meane to come to it; otherwise not, as if the disseisee release all actions to the heire of the disseisor, the right is extinct, otherwise it is if the release be to the disseisor, and a discent after, or if the Release be to the Lessee for life of the heire; a release of all actions reall and personall is no barr in a Writ of Error, but a release of a Writ of Error is; a release of actions is no bar to have Execution; if he be not put to a *Scire facias*,

a release of a thing due before the time of payment thereof, is good : *Querela* is more then an action, for by that the cause of action is released ; by release of suites, executions are barred ; for none shall have execution without suite for it , so it is of all duties ; but a release *de querelis infectis*, in that case barred not dowre ; by release of ties dowre is barred ; and by release of demands , which is the most ample release of all.

2. The collateral agreement is not of any force or effect, but generall words ought to be qualified by apt words contained in the same Deed as in this case, *mibi contingent per mortem dicti T. viri mei de aliquibus terris in W. &c.* and so extends not to any Land in G, but restraineth the general words to the Lands in W, onely : *Quando certa continet generalem clausulam , poster que descendit ad verba specialia , quæ clausula generali sunt consonantanea, interpretanda est carta secundum verba specialia* : As if a man grants a rent *id manerio de D. precipiendum*, in 100. Acres parcell thereof with claue of distresse in the 100 Acres, the rent shall issue out of the 100 Acres onely.

Arthur Blackamores Case, 8. Jacobi, fol. r36.

THE Defendant is named Gent. in the original Writ, but by negligence of the Curfitor he is outlawed by the name of Knight ; this is amendable at the Common Law, but in case of the King, default of the Court was amendable at the Common Law, as erroneous entrance of the continuance, esoyne, &c. and any part of the Record the same Terme ; and therefore diverse Statutes of amendments were made, one of the last whereof was, 8. H. 6, cap. 12. which was more large, and extends to proceffe, and to seven other things, to Records, Pleas, Parols,

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Parolls, Warrants of Attorney, to Writs originall and judiciall, Pannels, and Returnes; that is, where it was the misprision or the Clerke, and onely the default of the Clerke by negligence is amendable, but not by his nescience, as if an action be brought against executors in the *debet* and *detinet*, or if it be false Latine, but if a word which is not Latine be written for a Latine word, this is amendable, as *Imaginavit*, for *Imaginatus est*: in a Writ of Trespasse against diverse, if it abate for default against one, it shall abate against all, but if it be for matter in fact onely, as for misnaming one Defendant, it shall abate onely against him; omission or addition which doth not alter the forme is amendable, as if *Dei gratia* be omitted: Voluntary or negligent keeping of Records by the Clerke is amendable by other parts of the Record, or by exemplification: Count or plea in barr, &c. which wanteth substance, shall not be amended in another Terme, but default in the colour (because this is the default of the Clerke) shall be; a Record shall be amended in another Terme by the Paper Booke, and a thing apparent to be the fault of the Clerke, shall be amended in another Terme, as *rien lydoit deiboc*, &c. & *prædictus send. pro querent. Nisi prius* shall be amended by this Statute, if power be given to the Justices to proceed, otherwise not, as if issue joyned in the Record be mistaken in the *Nisi prius*, it shall not be amended, but misprision of damages shall be, because this is not materiall to the issue, and it is the default of the Clerke: Warrant of Attorney, and returnes are amendable by this Statute, but if there be none at all, it is out of the Statute; and because this Statute leaveth many cases without remedy, the Statutes of 32. H. 8. cap. 30. and 18. Eliz. cap. 14. were made: Ten misprisions as yet not remedied.

1. Variance materiall betweene the originall and the Count.
2. Want of substance in the originall, or Count.
3. Insufficient tryalls.
4. If a Coroner returns the Jury where the Sheriffe ought.
5. Lack of name of the Sheriffe to the returne.
6. Where no returne is indorced upon the *Venire facias*.
7. When one who is not returned, giveth a Verdict.
8. Pleas of the Crowne.
9. If it appear to the Court that he who hath a Verdict had no cause of Action.
10. Error in Law.

Cases in the Court of Wards.

Myghts Case. 7. Jacobi. fol 163.

RESolved, if I. M. purchase Lands to him, and an Infant in fee, it cannot be averred that this was to take away the Wardship, because he never was sole Tenant to the King.

2. No feoffment that I. M. can make of his moiety, can be aver'd to be by collusion, &c. because without feoffment no Wardship shall be, and also the Statute speakes of sole seisin.

3. A feoffment to the wife or younger Child cannot be averred to be by covin, &c. upon construction of the Statute of 32. & 34. H. 8. where collusion cannot be averred by the Statute of *Marlebridge*, it cannot be now to seize all the Land, but it may be for the third part which belongs to the King: If a third part be left to the King, no averment of covin

corin may be for the other two parts, the Father makes a feoffment to diverse uses, the remainder to his second Sonne and dyeth, his Eldest Sonne dyes, the second Sonne shall not be in ward by averment of corin.

Digbies Case, 7. Jacobi. fol. 163.

Tenant of the King conveys his Land to the use of himselfe for life, the remainder to his Sonne and Heire in taile, and after is attainted of Treason, the King shall have no wardship of any part of the Land by 32. & 34. H. 8. because there is no heire, and livery must be sued in the name of the heire, but the King shall have wardship in such a case before 26. H. 8. because there was an heire.

The Earle of Cumberland's Case, 7. Jacobi. fol. 166.

E. 2. granted the Castle and Mannor of S. in taile to R. C. H. 6. granted the reversion to T. C. If the taile be good, if not, he grants it in possession, this is good one way or other, and so are many Parents from time to time.

Paris Stoughters Case, 7. Jacobi. fol. 168.

BY mandamus it was found that P. S. dyed seised 40. El. and held of the Queene in common socage, 7. Jacobi. a *Melius inquirendum* was awarded, whether he held of the King by common socage, or in chivalry, and it is found that he held of the Queene by chivalry. This Writ of *Melius*, &c. is repugnant, and giveth no authority to finde this Office, because a Tenure cannot be of the King, in the time of Queene Elizabeth, and therefore a new Writ shall be awarded.

ed, but if the first *Melius* be good, no other shall issue. 1. For avoyding Infinitnesse. 2. A *Diem clausit*, &c. shall not issue upon a *Diem*, &c. Nor a *mandamus* upon *mandamus*, so a *Melius*, &c. shall not issue upon a *Melius*, &c. 3. If an Office be found against a Subject, he shall have a traverse, and if upon that it be found against him, he hath no remedy: So the King shall have but one office, and a *Melius*, and no more, although that a tenure be found of two Subjects, or one hath an *Ouster le maine*, the King shall not re-lease without a *Scire facias*.

Toursons Case, 3. Jacobi. fol. 170.

IF Tenant of the King commit Felloy A°. 1 Jacobi, and after is attainted A° 3. for the same, and after in A° 4. all is found by office. Now this office shall have relation to the time of the Felloy, to avoid all meane alienations and incumbrencies, but for the meane profits it shall have relation to the time of the Attendor, for then the Kings Title appeared of Record, and the like Law is of an *Ideor*. But in case of a ward within age, the King shall have the meane profits from the death of the Auncestor, because he hath it by reason of his Seigniory and he looseth the rent and services in the meane time; the difference is when the King seileth *jure protectionis regis*, or *Nomine districtionis*, and when *Ratione Prioris re-lli seu tituli*.

Sir Gerrard Fleetwoods Case, 8. Jacobi, fol. 171.

Sir William Fleetwood receiver of the Revenues of the Court of Wards, in Anno. 25. Eliz. was possessed of a Messuage and certaine Land in *Harcorn* in Com. Mid. for a tearme of yeares, in Anno. 36. Eliz.

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he became a Receiver generall, and was bound in 20. Obligations of 100 l. a peece to make true Account &c. And after upon severall accounts he became indebted in great Summes of money to the Queene, and being so indebted in consideration of 1100. l. did bargaine and sell the said Lease to *James Pemberton*, which by meane conveyance came to *Sir Gerard Fleetwood*. Question, Whether this Lease, &c. was extendable and lyable to the Kings debt, &c. and it was resolved, that the said sale of the tearme was good, against the King, because the tearm was but a Chattel, and the sale of the Chattels after judgement, *Bona fide*, is good, but not after Execution awarded.

And *Cooke* Chiefe Justice, said, that a Receiver or other accomptant which is indebted, shall not be in worse case then a Fellow or a Traytor, that may after Felony or Treason, and before conviction, sell, *Bona fide*, for his sustenance, &c. his Chattels, either reall or personall.

Hales Case, 8. Jacobi. fol. 172.

THe Heire Ward comes to full age, and tenders his Livery, and bargainns and sells, and dyes, the interest of the King is determined, and the Bargamee shall not answer for the meane profits, for the Heire had done all that he could doe, and no default in him, otherwise if he had not rendred it.

Sir Henry Constables Case, 8. Jacobi. fol. 173.

THe Sonne of the Tenant of the King is made a Knight in the life of his Father, the Father dyes, the Son within age tenders his livery, by that, the meane profits are saved, and the King shall not have the rates within age.

Virgill

Virgill Parkers Case, 8. Jacobi. fol. 173.

Virgill Parker seised of the Mannor of *Fusbell* in fee
 shoulde[n] of the King in Chivalry of his Dutchie of
Lancaster, maketh a feoffment of the one halfe to the
 use of himselfe for life, and after to the use of *Mary*
Coney (whom he intended to marry) for her life forther
 joynture, and after he married her, and then Leased
 the other halfe to I. C. for yeares, for payment of
 his Debts and Legacies, and dyed his heir within
 age. Question, Whether the King should have the
 third part out of the Mannor so Leased onely, or out
 of the whole; and it was resolved, that it shall be out
 of the whole Mannor, although the State of the
 Wife was precedent, that is, equally out of both
 parts.

The End of the Eight Book.

THE



THE NINTH BOOK.

*Dowmans Case, 28. Eliz. Communi
Banco. fol. 7. An Affise pleaded.*



He Defendant in an Affise makes Title by a recovery, suffered by P. V. to certaine uses, the Plaintiffe confesseth the recovery, and saith, That it was to the use of the said P. in fee, and traverseth that it was to the uses mentioned by the Defendant, the Jury found that it was suffered as the Defendant had alleadged, and that by Indenture subsequent, the intent of the parties was declared by them to be as the defendant had alleadged, adjudged for the Defendants.

1. Resolved; that this subsequent Indenture directs the uses of the precedent recovery by estoppel against the Recoveree; and his Heires, and although that it be granted, that a Deed is requisite to the priviledge without impeachment of wast, yet the estate without Deed is good: No averment can be taken that the recovery was to other uses then are mentioned in a precedent indenture, otherwise in an Indenture subsequent, because, if uses were declared by a precedent indenture, no Declaration after, shall devesst them: So if P. V. had charged the Land, and then

then had made such a Declaration, this shall not de-
vest estates of grantees, &c. but no declaration, being
he uses by Declaration subsequent, be divested.

2. In all actions between all persons, and in all is-
sues the Jury may give a verdict at large, and the Sta-
tute of W. 2. cap. 30. which giveth it in Assize, is but
an affirmance of the Common Law, but a Jury cannot
find a thing impertinent to the issue.

The death of Sir James Eyer Chiefe Justice of the
Common Pleas, with an ample and memorable En-
comium of him by Sir Edward Cooke, &c. *Vivit post fu-
nera Virtus.*

Anna Beddingfeilds Case, 28. Eliz. fol. 15. In dower.

A Common essoyne is allowable in dowre, and the
Statute of 12. E. 2. is to be intended of an essoyne
in the Kings service, for the Statute saith in preroga-
tion of the right which is properly this essoyne which
is for a year and a day.

2. If the tenant of the King dyeth seized of diverse
Mannors, and it is found by office that he dyed seized
of one, in dowre brought against the Heire of full
age he sueth a *Circumspecte agatis*, this extendt not to
more then is in the Office, for this Writ is in the na-
ture of an *ayde praier*, and the King hath no right to
seize more then is in the Office, and as to this Mannor
it was objected, that it shall be allowed as well as if
the Heire be within age, for in this Case, by the Sta-
tute of *Prerogat. Regis cap. 4.* that the Feme may be
indowed in Chancery: It was answered, that by the
Statute of *Bigamis. cap. 4.* ayde shall not be granted
of the King in that Case, and therefore before the
Statute of *Prerogat.* the King nor other Lord could
not indow the Feme, if the Heire were of full age,
because he is not then Gardian, and the Statute of

Prærogat. giveth power to the King to indow the Wife in such case, if she will, and not otherwise: where the Heire pleads to Dower, detinue of Charters, they ought to concerne the same Land, and this plea is to be allowed, because the Feme who detineth Charters is not worthy to have Dower, and also for the privity which is betweene the heire and her.

2. The Heire ought to shew the certainty of the Charters, or that they were in a Chest.

3. None but the Heire himselfe shall have this plea, nor the Heire himselfe, if he commeth in by purchase, or if the Feme had them by his delivery, nor if he comes in as Vouchee having no Lands in the same County, or as Tenant by receipte, because in these cases he cannot pleade as he ought, that he is ready to render Dower.

4. A Gardian shall not pleade it, because the Charters doe not belong unto him, but he may plead, detinue of the Ward, and if it be not restored unto him unmarried, the Feme shall loose her Dower, and after, the Tenant waived this plea, and pleaded *Unques accouple*, in loyall Matrimony, and the Bishop of N. certified, that they were lawfully married whereupon the Demandant had judgement.

Case of Avowry, fol. 20.

If there be Lord and Tenant by fealty, and rent, and the Tenant make a Lease for yeares and the Lessee hath done his fealty and paid his rent continually, and yet the Lord distreineth the Beasts of the Lessee for the rent, and avowes upon a meer stranger as upon his very Tenant.

Question, whether the Lessee be without remedy, for it is a position in Law, that a stranger to the avowry

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vowry shall not plead, but *Hors deson fee*, &c. But it was resolved, that the Lessee shall be relieved, and he must alledge, that the Lessor is seised of the Tenancy, &c. and the Lord shall be compelled to avow upon the Tenant, and the false avowry of the Lord upon a stranger, which is not very Tenant, shall not hurt the Lessee against the verity of the Case, *Quia veritas nihil veretur nisi abscondi*.

If one come to distreine for damage Fesant, and seeth the Beasts, and the owner chase them out, the party may not distreine them, damage fesant but is put to his Action of Trespasse, for the beasts must be damage feasant, at the time of the distresse taken, he who distreines for services upon fresh suite may avow upon the Land by the equity of 21. H.8.c. 19. if the Lord distreine when no rent is arreare, the Tenant or Lessee may make rescous, and so relieve himselfe.

The Abbot of Strata Marcella his Case. 34. Eliz. fol. 23.

IN a *Quo warranto* for claiming Waifes, &c. and Fellons good, &c. the Defendant pleaded as to the Fellons goods, that the Abbot of S. M. *Licite habuit & gavisus fuit* them untill the Abby was granted to the King by 27. H.8. and pleads also, 32. H.8.c. 20. of reviving of priviledges, of Abbies, and that the King granted a mannor parcell of the Abby, & *tot talia & tanta privilegia*, as the late A. had to one by whom he claimed by feoffement, and pleaded not the feoffement by deed: Judgement against the Defendant, for the Queene it was said, that the Charter of the Defendant was void.

1. Because it appeares not what estate the Abbot had.

2. Be-

2. Because the Defendant claimeth *Catalla felonum* appendant to a Mannor, because he pleaded a seoffement of the mannor, and had not pleaded it by deed, without which the priviledges do not passe.

To the first the Court answered that it shall be intended a seisin in fee untill the contrary be shewed.

To the second no resolution, but it was resolved, that if the King grant a Mannor, *ex bona & catalla felonum dicto Manerio spectant.* these passe although they cannot be appendant.

But for the third exception, judgement was given against the Defendant: In this Case foure things worthy of consideration.

1. What ancient Franchises ought to have allowance, as to that, some may be claimed by prescription without record, and some by record onely, and a Charter of the latter shall not be allowed, if it be before time of memory, if it be not allowed within time of memory, as allowance in Eyre, or confirmation by the King, but usage will not serve, and no more shall be allowed then are confirmed: Obscure words in these ancient Charters shall be construed according to ancient usage, and not according to usage at this day.

2. A man may prescribe in Franchises lying in poynt of Charter, with aide of allowance in Eyre without shewing the Originall Charter.

3. If a Patent of priviledges whereby they are granted in fee referre to a grant made before to one for life onely, this is good, for the relation is to the quality, and not to the quantity of the estate. See there what tryalls shall be allowed by Law, such priviledges as are ancient flowers of the Crowne, as *Bona & catalla felonum fugitivorum*, &c. if these come againe to the K. they are merged in the Crowne, but not those which were erected and created by the K.

as

a, Faires, Markers, Parkes, Warren, and the like.

Bucknalls Case, 42. Eliz. Com. Banco. fol. 33.

IF the Lord avow for other services then the Tenure is traversable, if for more services of the same nature, the seisin is traversable, for he may incroach, and it cannot be avoided in an avowry, if it be not for an outrageous distresse, but seisin binds nor in *Ne injuste vexes*, *Cessavit*, *Affize*, *Rescons*, or *Trespasse*, but in them he shall traverse the Tenure, but issue in taile, successor of a Bishop, &c. shall avoyde seisin in an avowry, and every one may, that can shew a deed of the tenure, but none shall have a *Contra formam Feoffamenti*, but the feoffee or his Heirs, and incroachment hurteth not, where there is no Tenure; and if an incroachment be of payment at more dayes if they agree in the Sum, it doth not prejudice. Seisin in an avowry is not traversable generally as never seised of the services, because by that meanes he leaveth no remedy to the Lord by avowry, but in such a Case he shall disclaime or plead out of his fee, and so traverse the Tenure: He who denyeth seisin after the limitation, must first acknowledge a Tenure, that the Lord may have his Writ of Customs and Services, as if the avowry be for rent, fealty and suite.

Henslowes Case, 42. Eliz. fol. 39.

AN Action of Debt was brought against Gage and others as Executors, one of the Executors refused before the ordinary the probate, and the rest of the Executors proved the Testament, it was adjudged, that notwithstanding that refusall, he may administer the will afterwards at his pleasure, for when

when many are named Executors, and some of them refuse, and other some prove the Testament, those which refused may afterwards administer, notwithstanding the refusall before the Ordinary, but if all refuse before the Ordinary, and the Ordinary commit the administration to another, then they cannot prove at any time, and the Executor that proveth the Will ought to name every other of the Executors that refused in every action for recovery of Debts of the Testator, and they may release the debts, duties, &c. and they which refused may have an Action by survivor, and after that Executors have administered, and have once taken upon them the charge of the Executorship, they cannot refuse at any time after.

It is holden in 2. R. 3. tit. testament. 4. that it is but of late times that the Church had the probate of Testaments in this Land, for 'twas given by an act, &c. and in all other Nations it is not so, but in England, and in many places of England, the Stewards in their Courts Baron, have probate of Testaments in their temporall Courts at this day.

Lymwood who was Deane of the Arches and writ in Anno Dom. 1422. did confesse the probate of Testaments to belong to the Ordinaries *De consuetudine Anglie & non de communi jure*, and that in other Realms the Ordinaries have not so, and in another place he affirmeth that the power of the Bishop in probate of Testaments, is, *Per consensum regni & suorum procerum ab antiquo*. And I have seene a Booke in Latine, published, 1573. by the Reverend Father Matthew Parker, Arch-Bishop of Canterbury, who was very Learned in matters of Antiquity. in these words; *Rex Anglie olim erat consiliorum Ecclesiasticorum pates, vindex temeritatis romanae, propugnator Religionis, nec ullam habebant Episcopi auctoritatem praeter eam quam a rege*

acceptam referebant, jura testamenta probandi non habebant, administrationis potestatem cuique delegare non poterant. It was resolved by Littleton, Newton, and Danby, in 7. E. 4. 14. that if all the Executors refuse before the Ordinary, they may prove the Testament afterwards, but I think this is before the Ordinary hath committed the administration, for afterwards they cannot. The Executors have their Title by their Testament, which is temporall. But to the suing of Actions in the Kings Courts, the Judges will not admit Executors for to sue, except that they shew the Testament proved under the seale of the Ordinary duly, but alwayes the Kings Courts have used to allow the probate of any of the Executors to inable them all to sue actions, but the probate of the Testament doth not give to them any interest or Title, either to the things in action or possession, for they have all their title and interest by the Testament, and not by the Probate.

Power to grant Administrations was granted to the Ordinary, by the act of 31. Ed. 2. ca. 11. for before that time, when a man died intestate, the King, who is *Patens patriæ*, was accustomed by his Ministers to seize his goods, to the intent they might be preserved, and bestowed for the Buriall of the dead, for payment of his debts, for advancement of his Wife and Children (if he had any) otherwise to his Kindred, as appeareth in *Rot. Claus. de 7. H. 2. in ib. bona intestatorum capi solebant in manus regis, &c.* And after this care and trust was committed to the Ordinaries, and it was resolved, *Per totam Cur. M. 8. and 9. Eliz. Dier.* that the Ordinary himselfe hath not any authority to sell any goods of the intestate, although they be in danger of perishing, neither can he release any debt due unto the intestate, by a Statute, in *40. 31. Ed. 3. ca. 11.* the Ordinary shall depart the

next

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next and most lawfull friends of the dead person intestate to administer his goods. And the Statute in *40. 21. H. 8. ca. 5.* is, that the Ordinary shall grant the administration to the widdow of the same person so deceased, or to the next of his Kin, or to both, as by the discretion of the Ordinary shall be thought good, &c.

Reade this latter Statute, to whom administrations shall be granted.

The Earle of Shrewsburies Case, 8. Jacobi, fol. 46.

RESolved, that the grant of the Stewardship of the Mannors of M. and B. without naming the County, in which, &c. is good, as if the K. grants all the Lands of priors, aliens, without naming the County, but the party in pleading must name the County, and upon *Non concessit* pleaded, it will appear by the evidence, and by circumstances, what Mannor was granted: but if he had demanded oyer, and demurred, it will be adjudged against him, for it is matter in fact, and the acts of confirmations extend not where the County is omitted, but where the County is misnamed.

2. The grant from a day past is good, and the intent was, that the Earle shall have the fees from that day, but if that cannot be, it shall be good for the time to come.

3. The Earle had no power to make Deputies, for three offices passe by these Letters Patents severally, whereof this is the middle, and to the first power is annexed to make Deputies, but not to the second; the words are *Habendum offic. pred.* (with such a contraction) To that the Court answered, that this *Habendum* shall have relation to this office, for it is intended, that the Earle shall exercise this

bale office by Deputy, for if a Sheriffe shall doe it, a *Fornori*, an Earle, 2. Admitting that hee cannot make a Deputy, this *Non user* is no cause of forfeiture, for true it is, when an office toucheth administration of Justice, *Non user*, without request, is cause of forfeiture; but if he be not bound to exercise it without request, otherwise it is as here, he is not bound by the Letters Patents to hold Courts until he be required: if an office be private and not for administration of Justice, *Non user*, without damage or request is no forfeiture. 4. Resolved, that the Writ and count were good, although they were *Vi & armis*, and the difference is between *Non feassans*, or negligence, and *misfeassance*, that may be *Vi & armis*, therefore if one bring an Action upon the Case, *Quare vi & armis*, he hindered men from coming to his Fayre, which is *Causa causans*, whereby he lost his toll, which is, *Causa causata*, and the point of the Action, this is good. 5. The office not being meimorable, it is in his election to have an Action of the Case, or an assize, otherwise it is of Land. See five Exceptions taken, to the Verdict: *Falsa Orthographia*, *Non vultat concessionem*, and the difference is between Writs and Grants: *Ille numerus & sensus abbreviationum accipiendus est, ut concessio non sit inanis*, and judgement was given for the Earle of R.

Hickmots Case, 8. *Jacobi. Com. banco. fol. 52.*

IN Debt upon an Obligation, the Defendant pleads a release, which is in these words, The Obligee Confesseth himselfe to be charged of all bonds, &c. and that he will deliver all but one bond, whereupon the action is brought, which was made by the Plaintiffe and another.

1. Resol. These words that the Obligee confesseth

seth himselfe to be discharged of all bonds, is a release and amounteth to that that the bonds are discharged.

2. The exception extends to all the premises, and not onely to the delivery.

3. The Plaintiffe by confessing that the Obligation was made by another, and the Defendant against whom onely he brought the Action, had abated his own Writ, and after the Plaintiffe was Non-suited.

Batens Case, 8. Jacobi. fol. 53.

A *Quod permittat* to abate a House levyed, *Ad nocumentum liberi tenementi*, I. P. and now of the Plaintiffe, and Courts, that the House of the Defendant doth juttie over the House of the Plaintiffe, and judgement given for the Plaintiffe.

1. Resolved, the Plaintiffe needs not shew how he had the estate of I. P.

2. The Writ is, *Ad nocumentum liberi tenementi*. I. P. and now of the Plaintiffe, and counts to the *Nusans* of the Plaintiffe onely, it is good for the levying in the time of I. P. implyeth a *Nusans* to him, and he must shew a *Nusans* to himselfe to maintaine the action.

3. If it appeare to the Court, that the *Nusansi* to the damage of the Plaintiffe, he needs not shew it specially, as if the House of the Defendant hangeth over the House of the Plaintiffe, as here, for it appeareth that the light was stopped, and that the raine discended: *Quod constat clare*, *Non debet Verificare*, and the Plaintiffe may abate the *Nusans* if he will: the Statute of *Westm. 2. c. 24.* which giveth the *Quod permittat* against the alienee of him who levyed the *Nusans* extends not to the alienee of the alienee.

The Poulters Case, fol. 55.

IF one were taken for the death of a man, he was notailable at the Common Law, without a Writ *De Odio & acia*; which serveth not if he be appealed or indicted. 1. If he be found not guilty upon the said Writ, he was notailable without a Writ, *Depo-nendo in ballivum*. 3. A Writ of conspiracy lyeth not before acquittrail, but the conspirators may be indicted or censured in the Starre-Chamber. Confe-deracies punishable by Law before Execution, ought to have foure incidents.

1. They must be declared by some manner of pro-secution, as was in this Case.
2. They ought to be malicious and for revenge.
3. They ought to be false against an innocent.
4. They ought to be out of Court voluntarily.

Aldreds Case, 8. Jacobi. fol. 57.

WHen a man hath lawfull profit by prescription of time, whereof the memory of man is not to the contrary, other custome of the like time, also, cannot take the former away, for the one custome is as ancient as the other. As if a man have a way over the Lands of B. to his Freehold Land by prescription of time, B. cannot alledge prescription or custome to stop the said way, for it may be, that before the time of memory the owner of the said Lands had granted such a way without any stopping, and so the prescription might have a lawfull beginning. 29. *Eliz. Banco regis*.

Thomas Brand prescribed time out of memory to have the light of seven Windows towards a piece of Land of Thomas Mosely, in the City of York, but
Mosely

Mosely erected a new building upon the said piece of Land, so neere, &c. as the light of the Windowes were stopped. Brand brought his Action on the Case, and judgement was given for the Plaintiffe, for it might be, that before the time of memory, the owner of that piece of Land did grant License to the owner of the Messuage, to have the said 7. Windowes without stopping them, and so the prescription might have a lawfull beginning.

If a man have a watercourse to his House for necessary uses, if a Glover make a Lime pit for Calf-skins so neere the said Course, that the corruption doth corrupt the same, an Action of the Case lyeth. 13. H. 7. 26. 6. Likewise a man shall not make or erect a Swyne-sty so neere his Neighbours House, as to annoy him with the contagion thereof.

John Lambes Case, 8. Jacobi. Starre Chamber. fol. 59.

IT was resolved, that every one that shall be convicted in case of *Libelling*, ought to be either a contriver of the Libell, or a procurer of the contriver, for a malicious publisher thereof, knowing it to be a Libell; For if one read a Libell or heare the same read, it is no publication, for before he heare or read the same, he cannot know the same to be a Libell, or if he read or heare the same, and laugh thereat, this is no publication; but if after he hath read or heard the same read, he repeate the same or any part thereof in the hearing of others, or if he write a Copy thereof, and doe not publish the same to others, this is no publication of the Libell, but it is good for him after he hath so written the same, to deliver it to a Magistrate, for then the act subsequent doth declare his intention precedent.

Robert Bradshawes Case, 10. Jacobi. fol. 60.

L Effor for fix yeares during the life of R. Covenants that he had power to make this Lease, the Lessee brings Covenant, and sheweth not that R. was in life, nor what person had right, and yet good: because if R. were not in life at the time of the Lease made, the Lease was absolute, if he died after, yet the Action lyeth, and he needs not shew who had right, for he had pursued the words of the Covenant, and it lyeth not properly in his notice.

Mackallies Case, In killing of a Serjeant, &c. 9. Jacobi. fol. 65.

Five exceptions to the Indictment.

1. The Arrest was in the night, between five and six of the Clock, in *November*, at the suite of a Subject, which being tortious, the killing of the Serjeant is but Man-slaughter. *Non alloc.* 1. Because the Arrest may be at the Suite of a Subject in the night.

2. Although that between five and six in *November* be in the night, yet the Court is not bound to take notice of it, without the shewing of the party, as in case of Burglary.

2. The Sunday is not *Dies juridicus*, therefore the Arrest that was made upon it was *Tortious*, Resolv. that judiciall acts shall not be done this day, but ministeri- all may for necessity.

3. The Indictment is in *Computar. in parochia S. M.* in W. omitting the Ward, yet good, as if one name the Towne, he is not bound to say in what Hundreded it is, 4. and 5. the precept was to arrest him, *Infra libertates L.* and the arrest was in L. yet good, because the Liberties of L. includes the City of L. it selfe.

selfe. 1. Exception to the Verdict, that the Indictment and the Verdict vary, for the Indictment is, that the arrest was by precept and by Verdict, it is found that it was by custome without precept. Answered, that the precept is but circumstance, and variance, in that it is not materiall, having found the substance, as if the Indictment be, that he killed him with a Dagger, and it is found that it was with a Sword, so if he be indicted of murder, and it is found man-slaughter, this is good; for *Ex malitia* is but circumstance. 2. The Indictment may be generall, *Ex malitia*, &c. because the Law implyeth malice, and so the precept not materiall. 2. The custome is not good; to arrest one without summons: it is good, and if the proccesse be erroneous, yet killing of him who did execute it, is murder, because he is not to dispute whether it be good or not, and if any officer in doing his office be slaine, this is murder, and in such a case an officer is not bound to flie to the Wall, as another is. 3. The Arrest cannot be before the plaint entered of record before the Sheriffe. *Resp.* it may by the custome after entry of it in the Porters Booke.

4. The Serjeant ought to shew at whose Suite the Arrest is, and in what Court, and for what cause, true it is, if the party submit himselfe, but here he was killed before he could speake, and if they kill him before the Arrest, knowing that he came for that purpose, this is murder.

5. It is not found that the killing was felony. *Resp.* It is sufficient for the Jurors, to finde the killing, which is the substance, and leave it to the Judgement of the Court if it be felony.

6. The Serjeant did not shew his Mace: He ought not.

1. Because he was commonly knowne.

2. The party arrested is to obey at his perill, and if

if shewing of the Mace be requisite, it will be a warning to the party to file.

7. The arrest ought to be upon request after the plaint entered: the request may be before or after.

8. The verdict is repugnant for they finde that the plaint was entered of record, 17. Nov. and after they found that it was 19. Nov. this is more strong against the Prisoners, because the entry was before the Arrest. 18. Nov.

9. The Plaint is without forme, this is not to the purpose, for it is but a remembrance to draw the count by at large after. And Mackalley and the other prisoners were Executed at Tyborne.

Peacocks Case, 9. Jacobi. in Camera Stellata. fol. 70.

Sir George Reynell Plaintiffe, Richard Peacock and others, Defendants, J. H. J. B. Commissioners to examine Peacock upon Interr. and Peacock being examined would have declared all the truth, but J. H. a Commissioner for the Plaintiffe, held him strictly to the Interr. so as the truth could not appeare; and this was holden by the Lord Chancellour, and the two Chiefe Justices, the Chiefe Baron, and all the Court of Starre Chamber, a great misdemeanour, &c. as the Statute of Exceter saith, *Per quod iustitia & veritas suffocantur*, and Commissioners to examine ought to be indifferent, and by all meanes to expresse the Truth. And they are not bound strictly to the Letter of the Interr. but to every thing also that ariseth necessarily for manifestation of the truth. And the said J. H. when he was in Examination of Peacock, went forth of the place to the Plaintiffe, being in another Roome, and had secret conference with him: And it was holden by all the Court, that a Commissioner, before publication of the depositions, ought

ought not to discover to any of the parties the matter thereof, nor after that he beginneth to examine Inter. to conferre with the parties, to take new Instructions to examine further then he knew before: and if he did, they were great misdemeanours, and punishable by Fine and Imprisonment, for if such things should be suffered, perjury would abound. I. H. was put forth of the Commission of the Peace, and the Attourney generall was required to preserve an Information against him, for the said misdemeanours.

Doctor Husseys Case, 9. Jacobi. fol. 71.

IN Ravishment of Ward against a Feme Covert, and others, they were found guilty, and the Baron, *Non culps*: and the Age of the Infant above sixteen, and Married: *Foster and Warberton*, a Feme Covert is within the Statute, because the Action lay at the common Law, and the Statute gives, but greater punishment, and so shee is within the Statute of *Merton*, cap. 6. *De Malefactoribus in parvis*, of forcible entry, and redevicissin, *Cooke and Wamsley* to the contrary: the Statute of *Westm.* 2. cap. 35. hath made these alterations, this extends to Heires Females, which the Statute of *Merton* did not. 2. It extends to Heires Ravished after yeares of consent, so doth not the Statute of *Merton*. 3. It extends to the Clergy, the Statute of *M.* doth not. 4. *M.* giveth a right of Ward, this giveth Ravishment of Ward. 5. This giveth more speedy processe, and the death of the Plaintiffe or Defendant abateth not the Writ. 6. It giveth greater punishment. 2. A Feme Covert is not within this Statute, for it is *Si heredem maritave-*
rit, & satisfacere non potuerit abjuret regnum, or be perpetually imprisoned, and because the Law disableth the Feme to satisfie, shee shall not therefore be exiled,

led, not perpetually imprisoned, and the Baron being innocent shall not be punished, for the punishment is personall, and he shall not have judgement at the Common Law, the Action being brought upon the Statute, nor judgement upon the Statute where the Action is brought at the Common Law. 3. The Verdict is insufficient, because no Case, is within the Statute, except the Ravishor marry the Infant, so that if the Infant marry himselfe, or be married by another, it is out of the Statute, and the Verdict found that he was married, and did not say by whom. 4. Damages shall be recovered upon this Statute, and where the Statute saith, that he shall be banished, or perpetually imprisoned, the Election is in the Court.

Combes Case, p. Jacobi. fol. 75. Upon a speciall Verdict.

A Copy-holder in fee (where there is no custome to that purpose) maketh two his Attorneys, to surrender to the use of I. N. in fee, they in Court shew the Letter of Attorney, and by the said Letter of Attorney surrender.

1. Resolved, surrender by Letter of Attorney is good, for a surrender may be by the common Law without custome, and may be by Attorney as incident to it : If one have a bare authority, coupled with a confidence, he cannot doe it by Attorney, as Executors cannot sell by Attorney, but if hee had authority to dispose, as owner of the Land, he may, as *Cestuy que use*, by the Statute of I. R. 3. but if one had particular personall power to dispose, as owner of the Land, he cannot doe it by Attorney, as if Lessee for life had power to make Leases for 21. yeares : There are personall things which cannot be done by Attorney, as Homage, Fealty, bearing his

villeine : admittance of him to whose use the surrender is made, may be by Attorney if the Lord will, and yet he may upon the admittance compell the Tenant to doe fealty, *A fortiori* here : and otherwise it would be a mischief, for it may be he is beyond the Sea, or sick, and cannot be present, to surrender for payment of his debts, or preferment of his Children, but if a custome be, that an Infant may make a feoffment at 15. yeares, he cannot doe it by Attorney.

2. The Attorneys have pursued their authority, although they have not done it in the name of the Authorizor, for they did shew the Letter of Attorney, and surrendered by authority thereof, which is all one, but if it be to make a Lease by Indenture, this shall be in the name of him who gave the authority, but Executors must sell Land in their owne name, for necessity, and yet the Vendee is in by the Devisor.

Henry Peytoes Case, 9. Jacobi. Com. banco. fol. 77.

It was resolved, *Per tot. curiam*, that accord in all Actions, wherein is supposed the Tort to be made (*Vi & armis*) where *cap.* and the exigent lyeth at the Common Law, is a good plea, as in Trespasse, and *Ejectione firma*, definue of Charters, house, or other goods, for where the certainty is to be recovered an Action is a good plea, when the condition in a Deed by the Originall contracts of the parties, is to pay money, yet by accord and agreement betweene the parties, any other thing may be given in satisfaction of the money, *Res per pecuniam estimatur & non pecunia per rem*. And in this sense the saying is true, *Quod pecunia obediunt omnia*.

Every

Every Accord ought to be plaine, perfect, and compleat; for if diverse things are to be observed and performed by the accord, the performance of part is not sufficient, 17. E. 4. 2. & 6. H. 7. 10. Pl. com. 5.

If a man be bound in an Obligation, in one hundred Quarters of Wheate, upon condition to pay 68. Quarters, he cannot give money or other thing in satisfaction thereof, because the contract Originally was not for money, but for a collaterall thing.

Also, if the things to be performed be at a day to come, tender and refusall is not sufficient without actuall satisfaction and acceptance.

If a man be bound in a Statute, Recognizance, or Obligation, and after a defeasance is made to pay a lesse Summe, now this Summe in the defeasance is collaterall, and therefore if the Obligor tender the same at the day, and it is refused, the Obligee shall loose the same for ever, as is holden in 23. H. 6. fol. 2. and yet in this Case, the Obligor by accord betweene the parties may give any Horse or other thing in satisfaction of the money in the defeasance, for the Contract originally was for money. But if a man by Contract or Assumpsit without Deed be to deliver an Horse, or to build an House, or to doe any collaterall thing, money may be paid by accord, in satisfaction of such contract, for as a contract in consideration may commence by word, so by accord, by words for any valuable consideration, the same may be dissolved.

Agnes Gores Case, 9. Jacobi. fol. 81.

WHerein was resolved, that if A. put poyson into a Pot, to the intent to poyson B. and set the same in a place where he supposeth B. will come, and drinke thereof, and by accident one C. unto whom A. had no malice, commeth, and of his owne will, taketh the Pot, and drinketh thereof, of which poyson he dyeth, this is murther in A. for the Law coupleth the event with the intention, and the end with the cause. But if one prepare Rat-Bane to kill Rats or Mice, and lay the same in certaine hidden places to this purpose, and with no ill intent, and another person finding the same doth eat thereof and dyeth, this is no Fellony. But when one prepareth poyson with a fellonious intent to kill any reasonable Creature, whatsoever reasonable Creature is killed thereby, he that had the fellonious intent shall be punished. Resolved by all the Justices of England.

Coneys Case, 9. Jacobi. fol. 84. in banco.

THE Lord of a Mannor, and Tenant within the age of 21. yeares by Fealty and rent, the Lord infeoffeth a Stranger, to which feoffement the Tenant attourneth. Question, whither the attournement of an Infant will binde him to the payment of the services or not, and by *Cooke, Walmsley, Waxberton, and Foster*, it shall binde, for he is compellable in a *Per quæ servitia*, and shall not have his age, but he may avoide any prejudice thereby at his full age: and if a fine here had been levied, he had been compellable: and the rather because it is but a bare assent.

Pinchons

Pinchons Case, 9. Jacobi. fol. 85.

IT was adjudged, that an Action of the Case, will lye against Executors, for a Debt due by the Testator upon a simple contract. An Action upon Assumpsit, made by the Testator, was maintainable, against the Executors, upon a contract for Corne. *Norwood and Reader Case, plow: com. 181.*

Debts upon simple contracts ought to be paid before Legacies, and reasonable part of the goods of the Wife or Infant, which proveth that they still remaine; the Spirituall Court doth give remedy for payment of Legacies; and the reason of all this is, for that the Testator in his life time, upon his action of the case upon the assumpsit, might not wage his Law, as he might have done upon his action of debt; for no action is maintainable against Executors, where the Testator might have waged his Law in his life time: If a Prisoner doe eate and drinke with his Goaler, and dye, the Goaler shall have an action of debt against his Executors, for the meate and drinke of the Testator; and the reason is, for that in this case the Testator might not wage his Law, as is adjudged, 27. H. 6. fol. 46. in *Thomas Bodulgates Case*, and the reason that no wager of Law in this Case is, because that every Goaler ought to keep his Prisoner in *salva & arcta custodia*, and thereby the Goaler is in a manner compelled to finde Victualls for his prisoners, and therefore the Prisoner may not wage his Law; but if A. contract with B. for his commons for a moneth, &c. there, in an action of debt brought against A. he may wage Law.

If a Victualer, or common Innkeeper bring an action of debt for victualls delivered to his Guest. the Guest may wage his Law; for the Victualler, or Host,

is not compellable to deliver Victualls untill he be paid for them in hand, 10. H. 7, 8. in Anno. [4. H. 6. R. G. brought an Action of Debt for 10 Markes against *Thomas Timberhull*, and others, Executors of *William Vebb*, and declared that the Testator had decrein'd the Plaintiffe to be with him for a yeare in the Art of Limming of Books, paying per annum tenne Markes : And *Martin* did hold opinion, that the Action was not maintainable against Executors, and he took diversity between this Case of a Limmer, and of a common Labourer, for the Labourer may be compelled in spite of his head to serve, and his wage is put in certainty by the Statute, and it is no reason the Servant should loose his wages by the death of their Master, whom he was bound by the Law to serve, but in case of a limmer, he is not bound by the Law to serve, &c. so when he makes a Covenant it is his owne Act and folly, and not the Act of the Law, for he might have taken a Specialty, and the opinion of *Martin* in this Case, is good Law : But the true reason of this diversity, is, because that in this case of the common labourer, the Testator might not wage his Law as he might against a Limmer, and this appeareth in 11. H. 6. fol. 43. where the Gardian of *Freres Minors* in *Coventry*, brought an Action of Debt against *John Burton* of *Coventry*, Executor of *John Goate*, and declared that the said *John Goate* retained at *Coventry*, *Frere John Bredon*, a Brother of the said House by License of the said Gardian to Sing for him Masses for one whole yeare, and to say Saint *Gregories* Trentalls in the next year after, and shewed in certainty upon what services Saint *Gregories* Trentall did consist, taking for this, xl. s. per annum, and within foure dayes *John Goate* dyed, and the Defendant his Executor, and the said *John Burton*, granted to the said *Frere* to pay him the said Summe, for

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Doing the said services according to the Reteinor of the Testator, which Divine services the Frere did performe according to the reteinor, and all his wages were Arr. And in this case the diversity was taken, that a labourer may have an action of debt against Executors, without specialty, because that he may be compelled to serve by the Statute, and the Testator shall not wage his Law in this Case. But the Priest or Frere is not bound to Sing Masses, by the Law, against his will. And in every case where the Testator might have waged his Law, the Action is not maintainable against his Executors without specialty, for Executors may not wage the Law, upon the contract of another. In 2. H. 4. f. 16. *Lawr.* Saint Martin retained one for term of his life, in the time of peace and wars, 100 s per annum, which service he (as his servant) did do for two yearer, for which he brought his action of debt against John Belton, and others, Executors of the said *Lawr.* And judgement was given against the Plaintiffe, for the reason, and upon the same diversity, as is aforesaid; an Assumpsit without specialty is no more personall then a Covenant by specialty, and therefore dyeth not with the person.

William Banes case, in banco regis, 9. Jacobi. fol. 93.

UPon an Action of Assumpsit against Executors, the Plaintiffe needeth not to averr, that the Executors have assets in their hands, of the goods of the Testator, to the value of the said debt, for it shall be intended *Prima facie*, that they have Assets, for the Law doth presume, that the Testator will not leave a greater charge upon his Executors, then he will leave benefit to discharge.

If a Stranger do say unto a man to whom a Debt is owing, I pray you forbear your debt, and doe not sue
the

Lib. 9. *Sir George Reynels Case.* 355

the Partie untill Michaelmas, &c. and then I will pay you the Debt. This is a good consideration, although it be no benefit to him that made the promise for it; It is a damage to the Creditor to forbear his Suite or debt; he may have his Action of Assumpsit against such a Stranger after the day.

*Sir George Reynels Case, 9. Jacobi, fol. 99.
In Chancery.*

It was found by Office, by Commission under the great Seale, That the Marshall of the Kings Bench had committed diverse Forfeitures of his Office, by suffering voluntary escapes of Prisoners; That Office, and such like may not be granted for years, because it is an Office of trust, and personall, and he must continually attend, and be Sworn in Court.

Two matters of Record amount to an Office, as in the Case of *Sir John Savage*, who was Sheriffe of the County of *Worcester* for life, by Letters Patents under the Great Seale, and was Indicted of two voluntary escapes of Fellons; and the King may seize his Office into his own hands; without suing forth any *Scire facias*, 5. Mar. Dyer. The Abbot of *Saint Albanes*, had a Gaole, and detained prisoners therein, and because he would not be at charges to sue forth Commission for the Gaole delivery, the King caused his Franchise and liberty thereof to be seized into his owne hands.

The Abbey of *Crowland* had a Goale and Prisoners, and for that he once deined men that were quit of Felony, the King resealed the Goal for ever.

If a man grant an Office to another for life, or for yeares, and he will not doe his Office, or otherwise misple his Office, the Grantor may resealed the said Office. 39. H. 6. fol. 34.

If a Gaoler commit voluntary escapes, or permit them, this is a forfeiture of his Office, *Cooke, Lib. 9. in the Countee of Salops Case.*

The King may grant the custody of the Goale to one in Fee, and also to the Sheriffe of a Countie, to one, and his Heirs, which estate in fee simple, includes all other estates, and it is true; that these grants may be made by Law, for in these cases, there is not any intermission, for presently after the death of the Ancestor the Office discends to the Heire.

2. This Office cannot be forfeited by Outlary, as if it were granted for yeares, it might; grants of these Offices in fee, or for life, have been allowed, and approved, but such grants for yeares were never allowed or approved, *Et periculosum existimo quod bonorum virorum non comprobatur exemplo*: He that hath the custody of the Gaole, whither by right or wrong, shall be charged with escapes of Prisoners untill he be actually removed.

Margaret Podgers Case, 10. Jacobi, fol. 104.

IP. Copyholder for life, the remainder for life, the Lord bargained and sold, and levyed a fine to I. P. this discended to M. P. who levyed a fine, five yeares passe without claime of them in remainder, adjudged no bar.

1. Resolved, that Copy-hold estates are within 4. H. 7, by the word *Interest*, but if the word be by covin, this barreth not the issue, if Lessee for yeares, or Copy-holder be ousted, the Lord shall not have five yeares after a fine levyed by the disseisor, after their estate determined, because he may presently have an assize, otherwise where Lessor for life is ousted: A meere Stranger cannot enter to avoyde a fine without Commandement, or assent of the party who hath right,

right, but a Gardian in socage, or Lessor for life, or Lord of a Copy-holder, may, for the privity between them, and the Infant or Lessees.

2. A Fine barreth not any by Non-claim who is not put to a right, therefore here they in remainder are not barred, because the bargain and sale, and Fine to the Tenant in possession putteth them not to a right.

1. Because it is lawfull act.

2. Tenant in possession devesteth not the remainder by acceptance, as if Lessee for life accept a fine, *Comē ceo*, although it be a forfeiture.

3. Because he is in by 27. H. 8. of uses which doth do wrong.

3. After the bargain and sale he in the next remainder shall not enter, for by the custome his estate was to commence after the death of the Tenant in possession, so if Tenant in possession forfeire, the Lord and not he in remainder shall enter, but thereby without a speciall custome the remainder is not destroyed: If a Copy holder in fee surrenders to the use of one for life, no more passeth then serveth the estate limited, and he shall pay no fine for admittance after the death of Tenant for life: It seemed to the Chiefe Justice, that if the Lord here had charged the Land, I. P. shall not hold it charged, for the estates in remainder preserve him from incumbrances of the Lord.

Meriel Tresham's Case, 10. Jacobi. Communi Banco fol. 108.

AN Administratrix, Defendant in Debt pleads that the Testator and his Sonne acknowledged a recognizance to the King, of a hundred pound, and another of 800. l. to B. and another of a 1000. l. to

A a 3.

M. and

M. and diverse others, over and about which she had not assets, and after said she had not sufficient assets, the Plaintiffe replieth, that the recognizance to B. was for payment of 400. l. which is paid, and the other to M. is to performe Covenants, whereof none is broken; and the recognizance remaineth in force by Covin of the Defendant.

1. Resolved, that the bar is insufficient, for she first confesseth that she had sufficient assets to pay the said recognizances, and after denyeth.

2. She saith she had assets, but not sufficient, this is too generall, but she must confesse how much she had, because she had knowledge thereof.

3. The pleading by the Plaintiffe, that the Obligation was made to performe Covenants, is good without more certainty, because he is a Stranger.

4. The generall allegation of Covin is good, without shewing of refusall to release, &c. and fraud may be in one only, also the bar is insufficient, because the intestate was bound in the recognizances, with another, and the Defendant had not averred, that the other had not satisfied them.

Robert Marys Case. 10. Jacobi, fol. III.

A Commoner being Copy-holder brings an Action of the Case, for putting Beasts into the Common, whereby he lost his common, the Jury found, that the Defendant did not put in the Beasts, but they of themselves depastured there.

1. The Jury have found the substance of the issue for the Plaintiffe, the depasturing there, and it is not materiall if he put them not there.

2. This Action lyeth, for the Commoner, for he may distraine damage feasant, and it may be, that with strong hand he is hindered to distraine, and so

if he shall not have this Action he is remediless.

2. A Commoner who had freehold in the common shall have an Affize, *Ergo*, a Copy holder shall have this Action.

3. The wrong ought to be so great, that the Commoner loose his Common, as a Master shall not have an Action for beating his Servant without losse of his Service, and it appeareth not to the Court that there are more Commoners then he, and if there be, yet an Action lyeth, because each had private damage, and it is not like to a Common Nufans, which shall be punished only in a Leet, If there be not speciall damage, but be the Trespasse never so little, the Lord may have an Action of Trespasse.

The Lord Sanchers Case, 10. Jacobi. fol.

117. *For procuring the Murder of John Turnor, Mr of Defence.*

1. **R**esolved, That a Baron of Scotland shall be tried by Commons of England.

2. The Indictment of the accessory in one County to a Felony in another County, by the Statute of 2.E. 6.c.24. shall recite, that the Felony was done in the other County, for an Indictment is no direct affirmation of the fact.

3. The Justices of the Kings Bench are within these words of the Statute, Justices of Gaole delivery, or Oyer and Terminer, for they are the Supream Judges of Gaole delivery.

4. The Lord Sancher cannot be in the Terme-time Arraigned in Midd. before Justices of Oyer and Terminer, because Justices of Oyer and Terminer shall not sit in the same County where the Kings Bench is, but the principalls were Arraigned in L. in the Terme-

time, because this is another County.

5. There needs not be 15. dayes for the returne of the *Venire facias*, upon an indictment in the same County where the Kings Bench is, otherwise in another County.

6. Because there is no direct proof that the Lord S. commanded one of the principalls, but that he associated himselfe to one who was commanded, the best way is to arraigne him as accessory, to him whom he commanded, but if he be indicted as accessory to two, and found accessory to one of them, this is good.

The word appeal in the Statute of W. 1. c. 14. is to be intended generally, (*Viz.*) by Indictment, by Writ or Bill, &c. and attainders is to be intended upon any such accusation, *Ergo.* if upon any such accusation the principall be attainted erroneously, the accessory may be arraigned, because the attainder is good, untill it be reversed, but if the Accessory be Hanged, and after the Attainder against the principall is reversed, the Heire of the Accessory shall be restored to all which his Father lost, either by entry or Action: By 5. H. 4. cap. 10. none shall be imprisoned by Justices of Peace, but in the Common Gaole; whereby it appeares that Justices of Peace offend, who commit Fellons to the Counters in L. and other Prisons, which are not Common Goales.

Cases in the Court of Wards.

Anthony Lowes Case, 7. Jacobi, fol. 122.

A. L. Tenant, of 59. Acres, parcell of the Mannor of A. by Chivalry, and Suite of Court to B. whereof A. was parcell, and both A. and B. were par-

parcell of the Dutchie of L. out of the Countie Palatine holden formerly of the King in Chivalry, in Capite, and of another House there, holden of A. by fealty, and rent, H. 8. grants the rent by release to him and confirmeth his estate of the said Lands by fealty onely, and grants to him the Mannor of A. *Tenendum* by fealty and rent: it was Objected, that when the King grants the Seigniorie to his Tenant, the ancient Seigniorie is extinct, and a new one that is best for the King created, (*Viz.*) Chivalry. 2. When he extinguisheth services parcell of the Mannor of A. this shall be holden as the Mannor of A. is, this is by Chivalry.

But resolved, that the 59. acres and house, shall be holden by fealty onely, and as to the said Objection the release of the King doth not extinguish service, which is inseperable to a Tenure that is fealty, but all others are gone, and true it is, when the King grants, and expresseth no Tenure it shall be by Chivalry, but when the Land moveth from a Subject, and the Tenure is changed, the new Tenure shall be as near the ancient as may be, as feoffee of Tenant in *Frankalmoigne*, shall hold by fealty onely, and here, although they grant the services, yet he limits the grantee to doe fealty. A Knights fee is not to be taken according to the quantity, but the value of the Land, as 20. *l.* per annum, and a Hide of Land, is as much as a Plough can Plough in a yeare; Relief is the fourth part of the annuall value that is; of a Knight, five pound; of a Baron, a 100. Marks; of an Earle, 100. *l.* of a Marquesse, 200. Markes; of a Duke 200. *l.* The Eldest Sonne of E. 3. called the black Prince, was the first Duke in England, Robert, Earle of Oxford, in the Reigne of R. 2. was the first Marquesse, and the Lord Beaumont was the first Viscount created by R. H. 6.

Floyers Case, 8. Jacobi, fol. 125.

BARON and Feme seized of Lands holden in Chivalry in right of the Feme in Fee, levy a Fine to one who grants and renders to them and the heires of the Baron, and levy another Fine to their use for life, the remainder to their three Sons in taile, one after another, the remainder in fee to the Heirs of the Baron; the King shall have neither wardship of body nor Land.

1. Resol. That is out of the Statute of 32. H. 8. cap.

2. if he who had the fee dye, &c. in respect the estate by the first fine did not continue, and this although both the conveyances are voluntary.

2. The King shall not have wardship of the third part, because it is not for advancement of the Wife, for in the first Fine the Land moved from her, and she had no more by the second Fine then by the first.

3. In regard the particular estate is out of the Statute, no wardship accrueth to the King, by advancement of him in the remainder; but if a reversioner upon an estate for life, convey to the use of his Wife, this will give wardship of the body of the heire, for he in reversion is tenant; if a Lease for life be the remainder to two, and to the heires of one, he who hath the fee dyeth, his heire shall not be in ward; if the heire of one joyntenant, who had the fee dye of full age (living the tenant for life) his heire shall not be in ward, although he be within age by that Statute, because he is not immediate heire.

Sondayer Case, 8. Jacobi, fol. 127.

MS. deviseth to his Wife for life, the remainder to W. S. and if he shall have issue, that then his issue shall have it, the remainder to S. the remainder to T. &c. *Idem verbis*, upon condition that if any of them, or the Heires of their bodies, goe about to alien, that he in the next remainder to enter after the death of M. W. and S. T. suffereth a common recovery to his owne use in fee, he in the next remainder enters.

1. Resol. Every one of the Sonnes hath an estate taile. 1. These words if he dye without issue Male, are sufficient to create an estate taile. 2. The generall clause, if any of his Sonnes, or heires of his body doe it, maketh it manifest. 3. The condition proveth it, for they cannot alien if they have but for life, for this would be a Forfeiture.

2. The restraint of the Tenant in taile, to suffer a common recovery is voyd: See *Mildmayes Case* in the Sixth Book.

Quicks Case, 9. Jacobi, fol. 129.

THe King Lord, I. N. and Tho. Q. mesnes of a Mannor which they ho'd in common in, Capite and Tenant of three Acres holden in Chivalry, T. Q. maketh a feoffement of his moiety to the use of himselfe for life, the remainder to I. Q. his Son in taile. the tenant infeoffeth I. Q. who infeoffeth T. Q. to defraud I. N. of the wardship of his son within age, and dyes, I. N. seifeth the son, T. Q. dyeth, the King shall not have wardship of the body, and moiety of the three acres.

1. Resol. By the death of I. Q. it was a Chaw
vested

vested in I. N. and the King had but a possibilitie to have it, if T. Q. dye during the minority of the ward, which possibility shall not deuest the wardship out of I. N.

2. When the tenant infeofeth a stranger to defraud the Lord of wardship, the Lord shall not have ravishment of Ward, before recovery of the Land in the right of ward, and although the title of I. N. be but in action, yet it shall not be deuested by a descent after: See the Statute of 34. H.8. in Case of collusion.

Bewleys Case, 9. Jacobi, fol. 130.

THE King Lord, mesne by Socage, and tenant, the tenant is attainted of Treason, the King grants to one *tenendum* by Chivalry and Rent, and to doe his services to other Lords, the Tenant shall hold by Socage of the Mesne, and he by Socage of the King, because the intent of the King was to revive the mesnalty, which cannot be by any other way, and the reviving of the ancient tenure shall be in construction preferred before the reservation of a new; and the honour of the King shall be preferred before his profit, and there was no default in the Mesne.

Thomas Holts Case, 9. Jacob, fol. 131.

GRANDfather tenant in Chivalry in Capite, Father, and Son, the Grandfather conveyeth part of his Lands to the use of the Father and his Wife, the remainder to the Son in taile, &c. the remainder to the right heires of the Grandfather, and conveys other Lands to his younger Children for life, with diverse

verse remainders over, and dyeth, the Father tenders livery, and before he sueth it dyeth.

1. Resol. By the death of the Father before livery sued, and after tender, the King looseth the primer seisin, but not meane rates, if any be due.

2. The Son shall not pay primer seisin, nor sue livery, because the Father and not he, was, within the Statute of 32. H. 8.

3. If the King had had one primer seisin, he shall not have another of the lands conveyed to the younger Children, but that ought to be an effectuall seisin; Ergo, here because the King had not the effect of the primer seisin of the Father, he shall have primer seisin of the Lands conveyed to the younger children, as if he had the grant of a prochein avoidance and presents, and his Clerke dyeth before Induction, he shall present again, and before the Statute of *Donis*: If a Tenant in taile the reversion to the King had aliened *post prolem suscitatum*, with warranry which descends upon the King it is no bar without assents, the effect of the warranry.

4. The King shall not have primer seisin in regard of a secke reversion which descends to the Son, otherwise if a rent be reserved, the King may have that for a yeare: So note, for a fruitlesse reversion there shall be wardship, but no primer seisin.

Matthew Menes Case, 9. Jacobi, fol. 133.

Tenant of the King of a Messuage in Capite, who holds other Gavelkinde Land, deviseth all to his 4. Sons equally: 1. Whether the King shall have a third part of the Messuage onely: 2. Whether out of the part of the heire onely; because *Prærogativa Regis, cap. 1. Rex habebit, &c de quo unque tenuerint &c.* is intended; if the Land descend to the same heire

heire to whom the Land holden did descend.

1. Resolved if no Will had been made, the King shall not have the Lands, holden of others in socage, but when by the Will, (to which he is enabled by the Statute) he deviseth it to his Sons, there the saving in 32. H. 8. giveth to the King Ward and primer seisin; So if Lands in Chivalry, devisable by custome, are devised to the Feme, although the devisee be good, for all without aide of the Statute, yet the King shall have the Wardship of a third part.

2. The King shall have his third part out of all their Estates equally.

Ascoughs Case, 9. Jacobi, fol. 134.

THE King Lord, Mesne in Capite, and Tenant in socage, the Mesne grants to the use of himselfe for life, the remainder to the Tenant in Taile, if the remainder suspends the Mesnalty during the life of the Mesne.

Resolved, That during his life the Mesnalty is not suspended. 1. Not as to the Mesne, because he remaineth Tenant to the Lord, nor by reason of the remainder for the avoiding of fractions, otherwise if the remainder be limited in fee, for then he hath as high an estate in the Mesnalty, as in the Tenancy, and this can never be revived, and otherwise a Seigniorie in fee shall issue out of a Mesnalty for life, and there will be the Lord and Tenant in Fee, and Mesne for life: but if the Lord Grant his Seigniorie for years, the remainder for life to the Tenant, the Mesnalty is suspended: a Mesnalty or Seigniorie cannot be suspended in part, and in esse, for part by the Act of the party, but they may by Act of Law, or of a third party: As if the Lord take a Lease of part of the Tenan. — If the Seigniorie is suspended, but

if a Gardian indow the Feme the Seigniorie is in esse, for that part, and suspended for the residue: If two Coparceners are of a Seigniorie, and one cometh to the Tenancy by defeasible Title, the other shall distraine for the moiety of the Seigniorie, and the Act of the Coparceners shall not prejudice her.

There are foure manner of Avouries.

1. Upon his very Tenant.
2. Upon his very Tenant by the manner, where the Tenant had but a particular estate.
3. Upon his Tenant by the manner when the Lord had but a particular estate.
4. Upon the matter in the Land, as within his see, but the Lord hath liberty to Avow according to the Common Law.

Thoroughgoods Case, 9 Jacobi, fol. 136.

Tenant in fee infeoffeth one by Deed indented, and delivereth it upon the Land, in the name of seisin, this is good, and hath a double operation at one instant, viz. to deliver the writing as a Deede, and to deliver seisin of the Land according to the Deed.

1. Resolved, this is his Deed although he doth not say so, but delivers it in the name of seisin, for delivery is good without any word: if one deliver a Deed to one as an escrow, to be his Deed upon performance of conditions, this is his Deed presently, otherwise if he deliver it to a stranger: so words are good without actuall delivery, as if he saith, take it like to a livery within view. If the Obligee deliver the Obligation to the Obligor, to deliver, the Obligor may retaine it, for the words to redeliver are void.

2. Delivery of the Deed upon the Land, amounteth

eth not to livery and seisin, but it doth, if delivered in the name of seisin, so of any other thing, or if he saith, I deliver you seisin, without delivering any thing, this is good also.

Beaumont's Case. 10. Jacobi, fol. 138.

I. B. and E. his Wife. Tenants in speciall Taile, the remainder to the Heires of the Baron, I. B. levies a Fine to K. E. 6. who grants to the Earle of H. in fee, I. B. dyeth, E. enters, the Earle of H. confirms her estate, to have to her, and the Heires of the body of I. B. E. dyeth seised, having issue F. B. who accepts a fine, *Sar consans de droit tantum*, with Proclamations, and dyes, having issue Sir H. and I. Sir H. in Ward to the King after full age, and before livery, Covenanteth to stand seised to the use of himselfe, and his Heires Males of his body, and dyes, having issue onely a daughter in Ward, whether she or I. B. shall have the Land, &c.

1. Resolved, that E. had an estate taile, and the Statute of 4. H. 7. c. 24. which enableth the Baron to barre the issue, saveth the right of the Feme if she enter, or, &c. and one may have an estate taile which cannot descend, as if the Son in the life of the Father levyeth a Fine, the Father remaineth Tenant in taile still, although it cannot descend, and E. here hath an estate taile so long as she liveth, or the Heires in taile remaine.

2. The confirmation is void, for he who did confirm had but a possibility, which passeth not by the confirmation, and if he had a reversion in fee, yet it should be voyd.

1. Because the taile which the Feme had was confirmed, which cannot descend.

2. The confirmation doth not adde a descendible quality

quality, where he who should have it is disabled to receive by descent.

3. This would in effect repeale 4. H. 7. & 32. H. 8. two of the principall Pillars of the Law.

4. & 5. If Tenant in Dower grants her estate, there is a descendible quality in the Heire, to bring wast against Tenant in Dower, and although the Heire confirme her estate for life, and after shee assigneth it to I. S. who committeth wast, yet the action of wast is maintainable against her, *Pari ratione*, in the Case at Barre, in regard the confirmation doth not enlarge the estate of E. it cannot adde unto it a descendible quality.

6. There are but three manner of Confirmations, *Viz. Perficiens, Crescens, aut diminuens*, and the Confirmation in this Case, is none of them: and if E. had no power to levy a fine or suffer recovery, the reason is, because she cannot barre that which was barred before by her Husband, but this point was not now in Question.

The End of the Ninth Book.



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THE TENTH BOOK.

The Case of Suttons Hospitall, Baxter Plaintiffe, Sutton and Law Defendants, in Trespasse, in the Kings Bench, and adjourned into the Exchequer Chamber; and judgement given against the Plaintiffe.

1. Object.

BY the Parliament 7. *Jacobi*, the Hospitall was Founded at *H.* in *Essex*, Ergo, the incorporation made after by the Kings Letters Patents, is void, and the *Charterhouse* is not given by the said Statute because *S.* purchased it after.

2. *Sutton* who had License to found an Hospitall before the Foundation, dyed.

3. The *K.* cannot name the House and Lands of *S.* to be an Hospitall, because in *Alieno solo*.

4. Every Corporation ought to have a place certaine, but here the License is to found an Hospitall at, or in the *Charterhouse*, Ergo, before that *S.* had made it certaine, there was no incorporation, also the place of Corporation ought to be certaine by

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Meates and Bounds, and a place knowne will not ferye.

5. The King intended to make an incorporation presently, which cannot be before that S. name a Master.

6. Governors cannot be, untill there be poore in the Hospitall, *Ergo*, S. calleth it in his Will his intended Hospitall.

7. The Foundation cannot be without the words, *Fundo, ergo, &c.* and before such Foundation, a Stranger cannot give Lands unto it.

8. The Master was named at will, where he ought to be for life, and have freehold in the Land, also the Hospitall must be Founded before a Master be named.

9. The bargaine and sale made by S. is voyd.

1. Because the Money paid by the Governours in their private capacity, shall not inure to them in their politick capacity.

2. The *Habendum* is to them upon trust, which cannot be in a Corporation.

3. Because as before no Hospitall was Founded.

10. The King cannot make Governours of a thing not in *Esse*.

To the first it was answered, that the Letters Patents recite the preamble of the Act, whereby and in many parts of the Act, it appeareth that the incorporation was to be *In futuro*, when it shall be erected, and the Statute doth not give any Lands unto it, but power to give without *Licente* of alienation and mortmaine, and it appeareth by the Letters Patents that the erection precedes the *Licente*.

11. The *Licente* is to him, his Heires, Executors, &c. at any time hereafter, and the words of incorporation are in the present, and so the incorporation precedeth the execution of this *Licente*.

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3. Although the King gave the name, yet S. devised it, and assented to it, and the K. did it at his Suite.

4. The K. makes an Hospitall of all the premises, so that it is certaine, and as to that which was said, that a place uncertaine cannot be an Hospitall; It was answered, that a Mannor may be, which is more uncertaine then the *Charterhouse*. To the essence of a Corporation five things are requisite. 1. Lawfull authority to incorporate, and that may be foure wayes by the common Law, as the King himselfe by authority of Parliament, by the K. Charter, and by prescription. 2. The persons either naturall or pollicall. 3. A name by which, &c. 4. A place. 5. Words sufficient, but not restrained to a strict forme.

5. A Corporation may be without head; as if the K. incorporate a Towne, and give to them power to choose a Major, they are a Corporation before Election.

6. It is a sufficient incorporation, that there be an Hospitall porestare, for the Temple was a Corporation in the time of H. 1. and yet was not built till H. 2. time, but here the House was built before.

7. The first Donor is in Law the Founder, and when the K. giveth a name, and designes the place and the persons, the Founder hath nothing to doe but the donation; but if the K. leaveth the nomination to the party, there many times, although not of necessity he useth the words, *Fundo, erigo*, &c. But in truth the incorporation is made by the K. Charter, and the Founder is but an instrument.

8. The Master may be at will, for by the Letters Patents S. had power to name one at his will and pleasure.

9. The money paid by some of the Governours in their

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their private Capacity is good, but the payment was as Governours, and so they are acquitted. 2. A rent was reserved, which is a good consideration. 3. A bargaine and sale may be upon confidence and trust.

10. They may plead that they are seised *In jure incorporationis*, although then it be not *In esse*. In Answer to the presidents, some are Explanatory, some Nugatory, *Ex consuetudine antiqua*.

Sir Thomas Fleming Justice of England, became sick, whereof he after dyed, so that he never argued the Case: See there his severall advancements and commendations.

Mary Portingtons Case, II. Jacobi. fol. 35.

AFTER many things said concerning Perpetuities, in this Case it was said, that a recovery in a value, barreth an estate taile, although no recompence be had, because it is by judgement, as if issue in taile be barred in a formedon, by warranty and assents, but if the issue before judgement given, alien the assents, his issue shall recover the Land in taile, if Tenant in taile suffer a recovery, and dye before Execution, the issue is barred: It is absurd that one may barre one of going about to suffer a recovery, when he cannot barre the recovery it selfe, but if such a condition had been good, a Feme Covert by that shall not loose her Land, for shee shall not loose her Land by any conclusion without examination upon Writ in Court, and if shee acknowledge a recognizance, this is void, although it be with her Husband, because there is no Writ to examine her; if an Infant levy a fine, this is voidable, and shall be tryed by inspection, but a fine levied by a Feme Covert is voyd, if the Husband enter, otherwise not.

Jennings

Jennings Case, 38. *Eliz. Banco regis. fol. 43.*

TENANT for life suffers a common recovery, in which he in remainder in taile is vouched, who dyeth, the reversion in fee is barred,

1. Resolved, that at the common Law a recovery against Tenant for life, upon a true warranty, and recovery in value binds him in the remainder.

2. No Statute was made to provide for him, who had a reversion or remainder upon an estate taile, and the Statute of *W. 2. c. 3.* which giveth receite to a reversioner upon default of him who holds *Per donum*, is to be intended of Tenant after possibility of issue extinct, and 32. *H. 8. c. 31.* provides onely for a reversion or remainder upon a Lease for life.

3. There have been diverse evasions out of the Statute of 32. *H. 8.* as if Lessee for life Lease for yeares to one who infeoffeth one who in recovery Vouches Lessee for life, this was out of the Statute, because the Lessor and Lessee were put to a right, whereupon 14. *Eliz. c. 8.* was made.

4. 14. *Eliz.* extends not where Lessee for life vouched him in remainder in taile, because it is in the power of him in remainder to dock the reversion, &c. and the course is, that Tenant in taile bargaines and sells to one who suffers a recovery, in which, Tenant in taile is Vouched, and yet the bargainee had but for life: judgement affirmed in Error.

*a common
assessuer.*

Lampets Case, 10. *Jacobi. fol. 46.*

LEssee for 5000. yeares deviseth for life to one whom he makes Executor, the remainder to one Sister, and the Heires of her body, and dyes, the Sister taketh Husband, they release to the Executor,

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who

who demiseth for ten yeares to the Defendant, the Baron dyes, the Executor dyes, the Feme takes another Baron, who demise to the Plaintiffe, judgement against the Plaintiffe.

1. Resolved, a devise of the use of a Tearme to one for life, the remainder to another for life is good, as an Executory devise.

2. A devise of the Tearme it selfe in such manner is good.

3. The first Devisee cannot barre him who had the Executory devisee.

4. Assent of the Executor to the first devise, is an assent for all.

5. If such a devise be made to the Executor, and he enter, generally he shall have it as Executor.

6. Such an Executory devise cannot be granted over.

7. Such an Executory devise may be extinguished by release to the first devisee.

Obiect. That the first devisee had all the interest in him, and the other but a possibility, which cannot be released, as if Conisee of a Statute release his right in the Land, yet he may sue Execution.

It was answered, that a thing in Action cannot be granted to a Stranger, neither by the Act of the party, nor of Law, but it may be released to the Tenant, and here to him who had the present interest,

1. Because as it may be easily created, being a Chattell, so it may be easily determined. 2. Every right as well present as future, by joyning all who have interest one way or other may be extinguished; so if the Executor and the Sister here, had joyned in an assignement, this had been good. 3. When many things are requisite to the perfection of any thing, the Law respects the Originall Act, and here the fundamentall Acts were the devise, death of the deviser, the

the assent of the Executor, and death of the first devisee, and shee hath a right that may be released and the death of the Executor is but a meane to bring it into possession; as a Feme Covert barreth her selfe of Dower by joyning in a Fine with her Husband, but if the Baron sole levy a fine, and dyeth, and five yeares passe, the Feme is not bound; so if Tenant in ancient demesne levy a fine, he had possibility to have the Land againe, if the Lord bring a Writ of deceit, but he may release that possibility; but such a possibility as may be released, ought to be *Propinqua*, and not *Remota*, and it is more then a common possibility that an Executor will dye before 5000. yeares, and the person who releaseth it ought to have it in certeine, therefore if a remainder be limited to the right Heires of I. S. his Eldest Sonne cannot release it, because he is not certeine whither he shall be Heire at the death of his Father, so if a Lease be made to Baron and Feme, the remainder to the survivor of them for 21. yeares, the Baron cannot grant this Terme. 4. This by her death goeth to her Executor, therefore it may be extinguished by her, if the disseissee release all actions to the disseissor, who dyes, the disseissee shall have a Writ of entry against his Heire, or if Bailor release all Actions to the Bailee, he shall have a derinne against his Executors. 5. It is a present Legacy, although the interest be *In futuro*, and therefore the Legacy may be discharged, and consequently the interest it selfe; For, *Qui destruit medium destruit finem*, and this may be before assent of the Executor. 6. Otherwise there would be a perpetuity of Chattells.

2. By this release the Executor had a perfect estate for 5000. yeares absolutely.

3. The request and acceptance of the release by the Executor amounteth to an agreement.

The

*The Case of the Chancellour, Masters, and Schollers
of the Univerſity of Oxford, 11. Jacobi, fol. 53.*

THe Statute of 3. *Jacobi*, giveth presentments of Churches, which belong to Recusants, convicted to the Chancellour and Schollers of O. and makes grants of such Recusants void : One indicted of recusancy grants a prochein avoidance, and is after convicted, the Church becometh voyd, the Chancellour, Masters, and Schollers, bring a *Quare impedit*, and averre that he remained a Recusant.

1. *Resol.* The grant of the next avoydance betwixt the Indictment and conviction, is void, for the Statute is, that a Recusant convicted shall be disabled, &c. from the time of the Session of the Parliament, so a grant of the next avoidance by an Abbot before surrender, and after the Statute of 21. *H. 8. cap. 13.* of Monasteries is void ; so if an Officer of the King purchase Land, and alien it, and become indebted to the King, this Land is lyable to the debt.

2. Covine shall not be presumed if it be not averred, and if the Jury finde that Covine was to one intent, that shall not be taken to another intent, therefore because it is not said that this grant was by Covine, it shall not be intended.

3. Although the Statute giveth the avoydances to the Chancellour, and Schollers of O. yet they may bring a *Quare impedit*, in the name of their Corporation, and the misnaming of the Corporation doth not avoyd the act when it appeareth what Corporation is intended.

2. It was pleaded that the Statute giveth it to the Chancellour, Master, and Schollers, and the Defendant had demurred upon it.

3. This being a private act, it shall be taken as it is pleaded.

4. The

L. IC. *The Bishop of Salisburie's Case.* 379

4. The University must shew that the Grantor was a Recusant, convicted at the time of the avoydance, but not that he continued so, because it is a Chattrell vested in them, which shall not be devested by his conformity after. Judgement for the Plaintiffs.

The Bishop of Salisburie's Case, 11. Jacobi, fol. 58.

THE Defendant in a second deliverance, pleads a grant of the Bishop of S. to E. G. and himselfe of the Office of Surveyorship of his Mannors, with a rent charge of twenty Nobles *per annum*, with confirmation of the Deane and Chapter, and that it is *Antiquum officium*, used to be granted in such manner to such person and persons as the Bishop and his Predecessors shall please: The Plaintiffe pleads the Statute of 1. *Eliz.* and that the said Office hath not been used to be granted, but for the life of one, whereby the grant is voyd, *Et hoc paratus est verificare*: It was excepted to the Barre, that the avowant had pleaded that the Bishop and his Predecessors have used to grant the said Office to such person or persons, &c. And the Plaintiffe pleads in barre, that it had not been used to be granted but for one life, and concludeth, *Et hoc paratus est*, &c. where it ought to have been, *quod inquiratur per*, &c. yet it is good, because the avowry is in the disjunctive.

2. It is not averred that the Bishop is dead, and if he be not, the grant is good during his life; it is good, for it appeareth by the words *nuper Episcopum*, that he was dead, or removed: exceptions to the avowry, that to say this is an ancient Office is too generall, because he made title to the Office in selfe, but it had been good if he had claimed another thing, by reason of the Office, and the exception holden good: It was objected, that this grant was out of the Statute

of

380 *The Bishop of Salisburies Case. L. IC.*

of 1. *Eliz.* because no parcell of the possessions of the Bishoprick, as the Statute speaketh.

2. Such things are restrained by the Statute whereof a rent may be reserved.

3. If it had been an Office, parcell of the Bishoprick which the Bishop might exercise, this had been within the Statute, but this is not so.

4. If it be restrained for two lives, then also for one life: But it was resolved, that the said grant for two lives was voyd against the successor by the Statute of 1. *Eliz.*

1. *Resol.* This grant had been good at the Common Law, by confirmation of the Deane and Chapter.

2. The Act of 32. *H. 8. cap. 28.* inableth the Bishop to make a Lease for 21. yeares, or three lives, observing the limitations of the Statute without the Deane and Chapter.

3. The Statute of 1. *Eliz.* restraineth the Bishop to grant any parcell of his possessions, or any thing belonging to his Bishoprick, but for 21. yeares, or three lives, &c. but against the Bishop himselfe it is good, and this Office may be said belonging to his Bishoprick, because he had an inheritance in the disposition of it, and the intent of the Statute was to avoyd diminutions and dilapidations, therefore a grant of such an ancient Office of service and necessity for one life, as was accustomed, is out of the Statute, but more then that he cannot doe, because it is not of necessity; and the death of one of them in the life of the Bishop is not to the purpose, for the grant was voyd against the successor, and it shall not be made good by accident after.

4. Such a grant for one life, without confirmation of the Deane and Chapter is voyd, because it is out of the Statute of 1. *Eliz.* and resolved also, that although

though the Bishoprick be new, yet a grant of a necessary Office, with a reasonable Fee (of which the Court shall judge) bindeth the successor.

Nota, Where there was a clause in 1. *Eliz.* that Bishops may grant to the Queene, &c. 1. *Jacobi.* by Parliament restraineth them, and after Judgement was given for the Plaintiffs.

Whistlers Case, 10. *Jacobi* fol. 62. Upon a speciall Verdict.

BEfore the Statute of *Prærogativa Regis. cap. 15.* by the grant of the King of a Mannor, all appendants (without naming them) passe, and the Statute excepteth Knights Fees, Advowsons, and Indowments, but all other appendants now passe without naming them, and so doe Advowsons passe in case of restitution, for the Statute speaketh of Grants, and in Grants also, without expresse mention by the words *Ad plenè & integrè*, &c. See other good matter there, touching this Subject.

The Church Wardens Case of Saint Saviours in Southwark. fol. 66.

QUEENE Elizabeth leased the rectory to the Church-Wardens of St S. for 21. yeares, and after leased to them for 50. yeares, in consideration of the payment of 20. *l.* and surrender of the Letters Patents by the Church-Wardens, *Modo habentes & ad præsens possidentes*, and the speciall Verdict found, that they paid the 20. *l.* and that they delivered the Charter in Court to be cancell'd, and that they paid the Fees, but that no Vicar was made, yet the grant is good, for it appears that the intent was not to make a surrender in deed, because he saith, *Modo possidentes*, but a sur-

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a surrender in Law by acceptance of the second Letters Patents, and although a Corporation cannot make a surrender in deed, yet they may make a surrender in Law.

2. Although an action surrender is requisite, they have done all, which belongs to them by delivery of the Charter, and payment of the fees, and the Cancelling belongs to the Court.

3. Although it was recited that 20 *l.* was paid, yet it needs not to be found, for it is but in the personality, and is affirmed by the King to be paid, and is also executed: See *Barwick's Case*, 5. Report, 93.

The Case of the Marshalsea, 10. Jacobi. fol. 68. In false Imprisonment.

AN Action upon the Case, upon an assumpsit is brought in the *Marshalsea*, whereas no party was of the Kings House, the Plaintiffe recovered, the Defendants arrested the Plaintiffe by a precept, in the nature of a *Capias ad satisfaciendum*, and hee brings false Imprisonment, and judgement given against the Defendants.

1. Resolved, the Steward and Marshall at the Common Law hath two Authorities: One generall, as Vicegerents of the Chiefe Justice, in his absence, within the Verge: Another, as Judges of the *Marshalsea*. This last was limited to Debt and Covenant, where both are of the House, and to trespassse, *Vi & armis*, where one is, but not if it concerne Land, and because they have the generall authority at will, and the other for life, they draw many cases to the *Marshalsea*, which ought to be in other Courts: Their Jurisdiction by *Fleta*, Lib. 2. cap. 2. *Infra metas hospitij continentis* 12. *Leucas in circuitu*. And the Statute of 13. R. 2. c. 3. limits the 12. miles to be accounted about the Kings Tonnell.

2. The

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2. The reasons wherefore this special authority was given them, were,

1. Because the Suite there, is by Bill, by reason of their Priviledge, which cannot be elsewhere.

2. In respect of the necessity of attendance of the Kings Servants.

3. If Strangers shall be suffered to sue there, one Carman would sue another Carman there, *In aula Regis*, which were undecent, but the generall authority vanished by the Act of 28. E. 1. c. 5. which Ordained, that the Chancellour and Justices, of the King should follow him, therefore in *Præsentia Majoris cessat*, &c. and about 4. E. 3. the Court of K. Bench became Resident.

3. The Statute of *Articuli super Chartas*, is as much as an explanation of the great Charter, and the Charter of the Forrest, and not introductory of a new Law, and the third Chapter of that Act explains the Jurisdiction of the Marshalsea, as before, and if he hold plea, otherwise a prohibition lyeth, and the party shall have an Action upon the Case as a consequent upon the Statute.

4. That part of the Statute which giveth them Jurisdiction in trespassse, shall be intended trespassse, *Vt & armis*.

5. This Action lyeth against the Defendants, because the Court had not Jurisdiction, and so have not done it by command of the Judge, otherwise if the Court had Jurisdiction, but proceedeth *Inverso ordine*, or erroneously, as if a *Capias* be awarded against an Earle, &c. one who is Indicted before Justices of the Peace, cannot approve. 1. Because he cannot assigne a Coroner. 2. Because it is out of their Commission, if a Court Leete be holden at another day then it ought to be, the proceeding is *Coram non judice*, otherwise it is of a Court Baron, 6. R. 2. Action upon

upon the Statute *Plac. ultimo*, in the point, that judgement in the Marshalsea, when none of the parties is of the R. house may be avoided by plea without any Writ of Error, which proveth that it is void.

Leonard Lovels Case, 11 Jacobi. fol. 78. In Jeckine firma, for 8. acres, &c.

L. L. leased of diverse Mannors in socage and in chivalry, *In Capite*, maketh a feoffment to diverse uses, in an Indenture precedent, whereby he limits to himselfe for life, without impeachment of wast, and to the use of his Lessees and devisees, the remainder to his second Sonne in taile, &c. the reversion to himselfe with power of revocation, after he purchaseth 8 acres in socage, and revoketh, as to certayne Mannors holden in socage and deviseth them and the 8. acres to his Eldest Sonne, and the heires Males of his body for 500. yeares, provided that if he alien otherwise then for yeares determinable, upon the deaths of three persons or lesse number, rendering the old rent, or die without issue Male, then to his second Sonne in taile, with proviso to make Leases according to 32. *H. 8.* onely, L. L. dyeth, the Eldest Sonne enters into the 8. acres, and dyeth, leaving one Daughter, who marieth R. D. who enters into the 8. acres, &c. second Sonne dyeth, having L. L. who enters upon R. D. and leaveth to the Plaintiffe, who enters, upon whom the Defendant enters, and ejecteth, &c. and if the entry of L. L. the Lessor was congeable or not, was the Question, and it was adjudged that his entry was not lawfull, and judgement was given against the Plaintiffe, in this Case diverse points resolved, some at the common Law, and some upon 32. and 34. *H. 8.* of Wils.

i. Resolv.

1. Resolv. if a man seised of three acres of equall value, one holden in *Capite*, and giveth that and one of the other to his younger Sonne in taile, he cannot devise any part of the third Acre, because he had executed his power, and if he purchase other Land in forage, he can devise but two parts of that by reason of his reversion in *Capite*, expectant upon the estate taile.

Object. That the K. was once satisfied of the wardship by the Statute, in respect of the Acre holden, and the reversion thereupon shall not hinder the devise of Land, purchased after.

2. The Statute doth not regard this seck reversion, but inheritances of annuall value. *Resp.* To the first, that this reversion shall hinder the devise, by the words of the Statute, for he had a reversion of Lands holden, but although the Statute saith, that he may alien two parts, by act executed or will, if he alien to one of the three uses by act executed, he may devise the reversion, for the Statute is to be intended of an intire Alienation, and where the Statute saith in reversion or remainder, it is to be intended, that the devisor be seised of such a remainder which draws wardship.

To the second it was answered, that things which of their nature are seck, are out of the Statute, but not things which of their nature are of annuall value, but are not of value in respect of some Lease or gift. *Abq; abliquo inde reddendo*, and therefore seck reversions are devisable by the said Statutes; but if they be not, yet they shall hinder the devises of other Lands: To make one able to devise by those Statutes, the time of Having, Holding, and disposing, must concur, and therefore if a grant to the second Sonne here, had been in fee, although with power of revocation, the devise had been good, because he

had no Lands *In Capite*, at the time of the devise, if the Father conveyeth his Land to the use of his younger Sonne, the eldest being within age, after the death of his Father, he shall be in ward although nothing discend: A true Childe, and not in reputation is within the Statute, and if the Sonne purchase Land *Bona fide*, of his Father, this is out of the Statute, because it is not for his advancement; If Tenant in socage devise, and after purchase Land in Chivalry, the devise is void for a third part, but if Tenant in Chivalry and socage devise all, and after aliens the Land holden, this is good. To make division, that the King shall have a third part holden, the Lands shall be taken according to their value at the time of the death of the Devisor. The time of provision that a third part must discend, needs not concurre with the time of alienation, but it is sufficient that he had it at the time of his death. The estate to any of the three purposes, ought to continue to the time of death, and the Tenure must till after death, to make it within the Statute, and the estate also of Lands holden, ought to continue after death, therefore if Tenant in taile, in *Capite* devise socage Land, and dye without issue, this is good, so privity must continue after death, therefore if he who made the conveyance be attainted, this is out of the Statute: The uses to the second Sonne are in contingency, and not executed by 27. *H. 8.* by the power to make Leases, and devise reserved to the feoffor, and therefore the fee is in the feoffor in the meane time, so that having disposed of it, and being seised of it, he cannot devise the Land purchased after.

It was Objected, that the Statute saith, lawfully executed in his life, but here no use was to be executed in the second Sonne untill after his death.

It was answered, that after his death the uses were

were derived out of the feoffment, and so are as it were executed in his life.

It was holden by the Chiefe Justice, that the remainder to the second Sonne is contingent, in regard no alienation is found to be made by the Eldest, and if there had been, then it would be repugnant, that after alienation the Land should remaine to the second Sonne, and so *Quarung; via data*, the remainder (as this Case is) cannot vest in him, but this point was resolved by the Court. 2. The revocation is good, although the Indenture precedeth the feoffment, and that the uses are in contingency, and that the revocation is but in part, and the Chiefe Justice held, that the Eldest Sonne had but a terme determinable, and the second an estate taile; But in this, the Kings Bench and Common pleas differ in Opinion, and that if Lands be devised to one and the Heires of his body for 100. yeares, the Executors shall have it, and not the Heire, and the devisee may alien it, for it cannot be intailed, and so in *Peacock's Case*, 28. *Eliz. Banco Regis*, was it resolved.

Doctor Leyfields Case, 8. Jacobi. fol. 88. in Trespasse.

In Trespasse for Corne taken at O. C. the Defendant pleads that *Q. Eliz.* granted the Rectory of *O. C.* to *C. P.* (without shewing the Letters Patents) who demised to *G. P.* for 8. yeares, if the said *C. P.* so long live, and that he, as servant of *C. P.* tooke the Corne, and avers the life of *C.* the Plaintiff demurreth; because the plea amounteth to the generall issue, and it was adjudged in the K. Bench that the Barre was insufficient, because the Defendant shewed not the Letters Patents, and Error was brought in the Exchequer Chamber, because the plea amounts to the generall issue, because the De-

Defendant gave no colour, wherein Judgement ought not to be given against the Defendant, but onely to answer over.

2. Because he is not bound to shew the Letters Patents;

It was answered, that Colour shall not be given, for colour shall not be given where the plea goeth to the barre of the right, for it would be in vaine to give colour of right, and to barre him if he had right, as if a collaterall warranty, fine, Statute be pleaded, or if he claimes by a waife, otherwise where he pleads a discent, for this doth not barre the right, but the possession; he who claimes by sale in a Market overt, shall not give colour if he pleads generally, but if he pleads that L. S. was possessed, as of his owne goods, and sold them in a Market overt, or waived them; there he shall give colour, because he confelleth no interest in the Plaintiffe.

2. If the Defendant claimes by the Plaintiffe, he shall not give colour.

3. If the plea be to the Writ, or action of the Writ, no colour shall be given.

4. Colour shall not be given in case of Tithes for to whomsoever the Lands belong, the Tithes belong to the Parson.

1. Colour ought to be a doubt to the Laggents.

2. It must have continuance.

3. It must be such a colour that if it be effectually, will maintaine the Action.

4. It ought to be given by the first conveyance.

2. Resolved, Lessee for yeares of Lessee for life of the K. must shew the Letters Patents, for he who is privy in estate or interest, or who justifieth in right of a Party or privy, although he claime but part, must shew the first deed, and the reason that deeds are shewed to the Court, is, that the Judges and Ju-

ry (that which respectively to them belongs) shall judge of the sufficiency thereof, therefore a deed shall not be suffered to be given in evidence, by Witnesses, or Copy, except it be burned, or some such inconvenience, but a Copy of a record is good evidence: if a release be made to Tenant for life, this inureth to the reversioner, yet he cannot plead it without shewing, *a Fortiori*, here because the Lessee may contract with the Lessor, to suffer him to have the deed to shew, but Strangers who claime not the thing granted, nor interest out of it, need not to shew the deed, otherwise if he claimes the thing granted, or interest out of it; *Ergo*, the second grantee of a rent charge must shew the first grant, but he who claimes as Gardian, or meerly by the Law, without privity or power of providing the deed need not to shew it: But Tenant by the courtesie must shew it, because the deed was in his power living the Wife, otherwise of Tenant by Statute, &c.

3. The not shewing of the deed is matter of substance, therefore judgement shall be given against the Plaintiffe in the Writ of Error, although it was not shewed as Cause of Demurrer. And judgement was affirmed.

Nota, when a plea amounts to a generall issue, if the Plaintiffe demurre specially, upon 27. *Elix.* and the Defendant joynes, judgement shall be given for the Plaintiffe.

Edward Seymors case, 10. Jacobi. fol. 95.

THE Lord *Cheyne* Tenant in taile, the remainder in taile to I. C. the reversion to the Lord C. bargaines and sells, and levies a fine to the bargainee, with warranty to him and his Heires, the bargainee infeoffeth the Lord S. who infeoffeth E. S. I. C.

dyes, having issue T. the Lord C. dyeth without issue, *Edward*, Lord S. leaseth to the Plaintiffe, the Defendant by the command of T. ejected him; and judgement was given for the Defendant, and affirmed in Error.

1. Resolved, the bargaine had an estate discendible, during the life of the bargainor (whereof his Wife shall have power) and also the reversion in fee expectant upon the remainder in taile.

2. The fine after bargain and sale, is no discontinuance of the remainder, for this operates upon the estate passed by bargain and sale, and corroborateth that, and maketh it determinable onely, upon the death of the bargainor without issue, otherwise if the fine had preceded the bargain and sale.

3. It was objected, that the feoffment of the bargaine displaceth the remainder, so that the warranty which discends upon him barreth him: But resolv. that the warranty doth not bind him.

1. Because it was annexed to an estate determinable by the death of Tenant in taile, without issue, and to the reversion in fee, granted by bargain and sale, and fine, and not to the remainder in taile, and the Conisee by his own Act cannot make it to extend any further, therefore the estate taile being determined, the warranty ceaseth.

2. A warranty barreth not an estate, which is not displaced at the time of the warranty annexed, as if the Father maketh a feoffment of Land (out of which his Sonne hath a rent) with warranty, this binds not the Sonne as to the rent.

3. The feoffment was lawfull because he had fee, therefore he cannot make discontinuance.

4. A warranty cannot enlarge an estate, the remainder in taile to I. C. was not discontinued, for the feoffor was not then seised by force of the taile.

5. A collaterall warranty may be given in evidence, if it be not pleaded, for although it giveth not a right, yet it barreth anothers right, and the rather in an *Ejectione firma*, and other personall actions, because in them it cannot be pleaded by way of barre.

Notes, there are some Titles to which a warranty extendeth not, as in case of Mortgage, Mortmaine, consent to a Ravishor, for in these cases no Action lyeth, in which Voucher or Rebutter, can be, neither shall a discent take away an entry.

Bewfages case. 10. Jacobi. Common Pleas. fol. 99.

THE Sheriffe upon a *Fieri facias* executed, did take an Obligation of the Defendant to pay the money in Court, at the returne of the Writ, and this was adjudged good, notwithstanding the Statute of 23. H. 6. Before this Statute the Sheriffe could not let any person to baile which was taken, *Ad respondend.* as may appeare, *Fitz. Na. br. 25. a & b.* and in 34. *Elizabeth.* in Debt by *Dawson* Sheriffe of B. against *Barnam* upon an Obligation, the Defendant pleaded the Statute 23. H. 6. and shewed, that one K. recovered Debt and damages against him, and pursued one Writ of *Fieri facias* again^t him, directed to the Sheriffe of B. and that he made the Obligation to the Plaintiffe, for the Execution, and that the Obligation was void by the Statute, whereupon the Plaintiffe demurred, and it was resolved.

• First, that the Obligation was not within the Statute, because that the Statute extended onely to such Obligations which any who is in their ward did make unto him.

Secondly, that the same Obligation was not void at the Common Law, whereupon the Plaintiffe had judgement, and another judgement, 28. *El. Inter Burwey*

by Kett, upon an Obligation, taken by the Sheriffe, *Pro solutione pecunie debita domine regina*, upon extent out of the Exchequer.

Now it is said in the later clause of the Act, that if any of the Sheriffs or other Officers or Ministers aforesaid, take any Obligation in other forme, by colour of their Offices, that it should be void, &c. There are two manner of formes, (*Viz.*) *Forma verbalis* & *forma legalis*, for *Verbalis* stands upon the Letters and Syllables of the Act, *Forma legalis*, is *Forma essentialis*, and stands upon the substance of the thing to be done, and upon the sence of the Statute, *Quia notitia rationum huius Statuti, non in sermonum folijs sed in rationis radice posita est*, and according to this distinction this Branch of this Statute is to be expounded, and therefore in 27. H. 6. 1. If the Sheriffe take a single Obligation of one in his ward that wasailable, this was voyd, for this Obligation wants essentiall forme, prescribed by the Statute; for the condition prescribes the fault, which is part of the substance. And there Moyle said, that if the Sheriffe let one to Baile or Mainprise, that is excepted in the Statute, and not mainpernable, and take a simple Obligation, that the same is void, *Quod alij Justiciarij concesserunt*, for by the exception it appeareth, that it was not the intention of the Statute, that such should be let to Baile, and therefore the Obligation is taken in another sence then the Statute intends. And it seemeth to me, that as well in the same Case of 37. H. 6. as in the principall Case of Dive and Manningham, plow. 67. the Obligation which hath the condition to save the Sheriffe harmlesse (when the Sheriffe against the Law purteth one to Baile who is not Baileable) is against the Law, and void by the Common Law. And with this accordeth William Wisshams Case, 15. Eliz. Dyer. 324. and in 7. E. 4. One was in custody of the Sheriffe by

by force of a *Capias*, upon an Indictment of the Trespass, and the party maketh the Obligation to another, by the direction of the Sheriffe, upon this condition, as the Statute prescribes for the suerty of the Sheriffe, &c. and there it is holden that the Obligation is void, because the Statute prescribes, that the Obligation shall be made to the Sheriffe, and that is part of the essentiall forme; and so, if the Sheriffe add to the condition, that he shall be kept harmlesse against the King and the Plaintiffe, &c. this is void, so if a Gaoler or a Sheriffe take an Obligation of the person, with condition to be true Prisoner or to pay for his meat and drinke. So if the Sheriffe add any other thing to the matter prescribed by the Statute, as to pay such a Sum of money for a Horse, &c. This condition maketh all the Obligation void, for it is taken in another forme (touching the substance of the matter,) then is prescribed by the Statute, but in *Pasche 27. Eliz.* in the Kings Bench, in an Action of Debt brought by Sir William Drury, late Sheriffe of *Suffolke*, upon an Obligation of 20. *l.* against A. B. it appeared that the Defendant was solely bound in the same, and with condition, that one *Moore*, who the Sheriffe had arrested upon a *Warrant*, should appeare in person at the day contained in the Writ, the Defendant pleaded the Statute, 23. *H. 6.* and that the obligation was made in other forme then is mentioned in the Statute; whereupon the Plaintiffe demurred in Law, and it was Objected that there were 3. variances from the Statute. (*Viz.*) one in the Obligation, and two in the condition. First, in the Obligation, for that there was but one surety, and the Statute prescribes reasonable suerty of sufficient persons in the Plurall number, having sufficient within the said County, &c. in which case there ought to be two Sureties at the least, and the Plurall number cannot

cannot be satisfied with the Singular number, and so contrary to the words of the Statute. And so was the Opinion of Mountague Chiefe Justice of the Common Place in the Case of Dive and Manningham.

Also, in the condition that the Prisoner should appeare in person, , where the words of the Statute are, that he should appeare (generally) without these words (in person.)

2. That he should appeare at the day , &c. *Ad respondendum* , where these words *Ad respondendum* are more then the Statute prescribes , and therefore the Objection is void , &c. but it was resolved by Sir Christopher Wray , Sir Thomas Gaudy , and all the Court , that the Obligation was not voyd, by the said Act.

For to the first ; The words reasonable surety of sufficient persons are added for the suerty of the Sheriffe , and therefore if hee will but take one surety, be it at his perill , for he shall be. amerced if the Defendants appeare not ; and therefore the Statute doth not make void the Obligation in this Case, for the same Branch that requires forme, requires also that the Obligation shall be made to the Sheriffe himselfe, by the name of his Office, and that the Prisoners should appeare, in which clause no mention is made of the sureties, so as the intent of the Act was, that in so much as it was at the perill of the Sheriffe to leave to his discretion, to take one or more for his indemnity, and although the sureties have not sufficient within the same County as the Statute mentioneth, yet the Obligation is good : For these words of the Act, (as to this point) are more for counsell or direction of the Sheriffe, then for precept or constraint to him, and that for the safety of the Sheriffe, for if the Defendant cannot find two sufficient persons, having sufficient within the same Conntry, the Sheriffe

Sheriffe is not bound to let him to Baile, and this resolution agreeth with the ancient rule, *Quilibet potest renuntiare juri per se introducto.* And as concerning the second Additions to the condition of the said Obligation, more then is in the Statute.

It was resolved, that true it is there is a Verball difference of the forme prescribed by the Statute; but not in the substance and effect, for he that is so letten to Baile, ought to appeare in person, for so much is implied in the words of the Act, (shall appeare) and by the common Law, every Tenant or Defendant ought to appeare in proper person; and with this accordeth *Fitz. Na. br. 25.* and he that ought to appeare, ought to appeare *Ad respondend.* & *parum differunt quæ re concordant & est ipsorum legislatorum tanquam viva vox rebus & non verbis legem imponere; vide Dyer. 21. Eliz. 364.* where the condition was in the conjunctive (appeare and answer) and yet the obligation good, *27. Eliz.* in *Darby & Heibcot,* if a Gaoler or Sheriffe for ease or enlargement of any Prisoner, take promise to save him harmelesse, that although the Statute speaketh onely of Obligations with condition, yet it is an equall mischiefe. And *Wray* Chiefe Justice said, that the Statute should serve for small or nothing, if the premises should not be taken to be within the Statute, and the latter clause is generall, (*Viz.*) If the Sheriffe take any Obligation in the other forme, that it shall be void, and within the equity of these words, (any Obligation,) an *assumpsit* is comprehended; for the ancient Verses are,

*Verba ligant homines, taurorum cornua boves,
Cornu bos capitur, voce ligatur homo.*

Quando verba Statuti sunt specialia, ratio autem generalis,

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lis, generaliter Statutum est intelligendum : It was said, that the *Assumpfit* did not bind the Prisoner at the common Law, because the consideration was against the Law ; *vide Dyer. 19. Eliz. Oneleys Case.*

Alfridus Denbawds Case, 10. Jacobi. fol. 102. In Error.

of the principall

ONE Jury onely appeared at the Assizes to try an Issue in Trespasse, a *Tales de circumstantibus* is awarded at the Prayer of the Plaintiffe ; the title of which, was, *Nomina decem Talium*, and verdict and judgement was given against the Defendant, who brings Error.

It was Objected, 1. That the judgement was erroneous, for the Title being *Nomina 10. Talium*, the Sheriffe cannot returne 11.

2. Because the Statute speaketh with these persons that were before impannelled, which cannot be satisfied, where one onely appeareth, as the Statute of *Westm. 2. c. 11.* is not satisfied with one Auditor, so of the Statute of *Merton. c. 3.* of Redisseisin : It was resolved, that the *Tales* was well awarded, for the Statute shall be taken beneficially in favour of speedy Trialls, and the title is the misprision of the Sheriffe, which shall be amended.

The time of granting the *Tales* is when so many of the Jurors make default, that the Inquest cannot be taken ; if two of the principall pannell appeare, and at the Prayer of the Plaintiffe twelve *de Circumstant.* are returned, and then the two principalls are withdrawne, now the triall shall be all by the 12. *de circumstant.* but the Lord *Dyer* made a quære of that, if one of the Jurors die before the Verdict be given, a *Tales* shall be granted, he who is meerly a Defendant cannot pray a *Tales* untill default be made by the

the Plaintiffe, the number ought to be under the number in the principall pannell, except in an appeale, because there the Defendant may challenge peremptorily: the number shall be diminished in every new Tales, and they ought to be of the same quality with the former, as if the principall pannell were *Per medietatem lingua*, so shall the Tales be: Justices of Assize shall not award a Tales, *de circumstantiis* in an Assize for the Statute of 35. H. 8. c. 6. speaketh where the Triall is *Habeas corpora, distringas, or Nisi prius*, for an Assize cannot be taken by *Nisi prius*, but must be taken in the proper County; and after, by advice of all the Justices of the Common place, and Barons of the Exchequer, the judgement was affirmed.

Humphrey Lofields Case. 10. Jacobi, fol. 106. In debi upon Bond.

D. Leased for a yeare to H. L. and if the parties shall please to renew the terme at the end of that yeare, that he shall have for three yeares, rendering 40. l. per annum, H. L. bindeth himselfe to performe Covenants, and faileth of payment of 20. l. at Christmas Quarter, D. bringeth debt: It was resolved for the Plaintiffe. It was objected against the action.

1. That the reservation was upon a contingency, if the terme shall revive.
2. Because the reservation is *durante termino predicto (Viz.)* the last terme.
3. The reservation shall be taken strictly, because the words of the Lessor.

But it was resolved that the reservation extendeth to the first yeare, for the proper place of a reservation is after the limitation of the estate; as if a
Lease

Lease be made with diverse remainders over, reserving Rent, this goeth to all; and although the second terme be in contingency, yet the first is certaine, and *Termino predicto*, signifieth both the termes, for it is *Nomen collectivum*, and the reservation shall be taken reasonably, according to the intent of the parties. Tenant in taile of an Acre in borough English, and of another by the Common Law, by an Oxe, dyeth, having issue two Sons, the service shall not be increased; And Increase is onely betweene very Lord, and very Tenant, for there may be an increaser, but not where there is a reservation; or if the Seigniorie be by Deed, and services are reserved within time of memory, for he shall have no more then he himselfe reserved: In the Case at Barre in respect the Obligation was forfeited, the Court moved the Plaintiffe to take his arrerages, costs, and damages, with which he was contented, and so no judgement was given.

Arthur Legats Case, in subversion of possilient Parents of theevish Concealors, 10. Jacobi, fol. 109. in Communi Banco.

THE King, *ex certa scientia*, &c. grants fiftene Acres as concealed, which were parcell of a Mannor of the profits, whereof the King was answered: Nothing passeth.

1. *Resolv.* If the King were answered of the old Rent of the Mannor, and the Fermors, &c. suffer one to intrude in part, this is not concealed. 2. The grant is voyd; for *quæ quidem*, &c. is the suggestion of the parry.

2. This is a clause of restraint, and nothing passeth which is not concealed.

3. The King did not intend to diminish his Revenue,

me, which will be if the grant be good.

4. The clause, *qua quidem* hath a double conjunctive, *concelata & detenta*, and Land cannot be detained from the King.

3. *Ex mero motu*, &c. aydeth it not.

4. If the Officers of the King may by matter of Record, have notice of putting the Land in charge in Court of Record, and doe it not, yet this is not concealed, and if the clause *qua quidem* be added for more certainty, the grant shall not be vicious by it, if it be false, as if a Mannor be granted, *quod quidem*, was in the tenure of I. S. where it was not, this is good: If one substract, or take the Kings Rents, this is not concealed, for the King may charge him as Bailly, and the Law will make a privy: See the Statute of 4. H. 4. cap. 4. called in the Rolle Brangwyn, in English, *White Crow*. And it was said that Perpetuities, Monopolies, and Patents of concealment, were borne under one unfortunate constellation, for as soone as they came in question, judgement was ever given against them, and none ever for them, and they have all two inseperable qualities (*Viz.*) to be troublesome and fruitlesse.

Robert Pilfords Case. 10. Jacobi, fol. 115.

THE Plaintiffe in trespassse, counts to damages of 40. l. and at the *Nisi prius*, the Jury asselled for damages 49. l. and 20. s. costs, at the day in banke, hee released 9. l. parcell of the damages, and had judgement of 40. and 10. l. for costs *de incrementis*, the defendant brings error, because the damages and costs surmount the summe in the Court; but judgement was affirmed; for in reall actions before the Statute of Glocester, 6. E. 1. cap. 1. no damages were recoverable, but in personall actions and mixt they were,

were, and by that Statute a man shall have costs in all cases where he recovers damages (*Viz.*) before, or by the same Statute; therefore if after this damages are given where they were not at the Common Law, costs shall not be recovered, as in a *Quare impedit*, but if a Statute after this give double or treble damages, where damages and costs were by the Common Law; there the Plaintiff shall recover the damages increased, and costs also; but in waste against tenant for life, costs shall not be recovered, for although that this Statute was at the same Parliament, yet it was an act of Creation, and therefore no costs: And true it is, that damages include costs, in a generall sense, but in the count it is taken for damages, before the action brought in a relative signification; therefore *expensa liti* may be added to it, although he count not of them, as a man shall doe in reall actions without counting of them, because he shall recover them pending the Writ, *In contra sur disseisin*, the Plaintiff shall recover damages from the disseisin to the Writ of Inquiry, &c. and if the issue be tryable by verdict, &c. to the verdict, but in a *Precipe* of Rent of his owne possession hee shall recover all arreares to the judgement: Judgement affirmed by all.

Cheyneyes Case, 10. Jacobi, fol. 118.

IN a *Valore maritagij*, issue is joyned upon the tenure, and found for the Plaintiff, but the Jury did not inquire of the value: Adjudged the verdict is sufficient, and shall not be supplied by a Writ of Inquiry.

I. In this Writ three things are to be recovered, the value, damages, and costs, and although the issue be joyned upon the tenure, yet as a consequent upon

upon the issue, and their charge they ought to inquire of the value, if they finde for the Plaintiffe; as in an Assize, if issue be joynd upon a release, and found for the Plaintiffe, yet the recognitors must inquire of the seisin and disseisin, and this defect shall not be supplied with a Writ of inquiry, because then the Defendant would be prevented of his Writ of attain: But if the Court ought to inquire of things whereof no attain lyeth, this being out of Office, it may be supplied by a Writ of inquiry, as the foure points in a *Quare impedit* (*Viz.*) *de plenitudine, ex cuius presentatione, si tempus semestre transierit*, and the value of the Church *per annum*: and in the case at Barre by the rule of the Court, a new *Venire facias* was awarded.

The Case of the Major and Burgessees of Linn Regis, touching misnaming of Corporations, 11 Jacobi, fol. 122. Communi Banco.

H. E. in the 29. yeare of his Reigne, did incorporate that Towne by the name of *Majoris & Burgensium Burgi domini Regis de Lynn Regis*, and one made an Obligation to them by the name of *Major and Burgessees of Lynn Regis*, omitting these words, *Burgi Regis*; this is good, because it is the same name in substance, and doth not vary in materiall words, and though it be not *Idem nomen syllabis*, yet it is *Re & sensu*; for Burgessees that implyes it is a Burrough, for Burroughs and Burgessees are *conjugata*, and by *Lynn Regis*, it appeares that it is *Burgus suus* (*i.*) *Regis a fortiori*, because there is no other Corporation of the same name. *Apices juris, non sunt jura*; there may be a difference betweene ancient Corporations, and new; for ancient Corporations may by usage have severall names; and the Major and Burgessees (not-

withstanding *Non est factum*, pleaded) had judgement to recover.

William Chuns case, 11 Jacobi. fol. 227. Banco Regis.

Te. 39 El. p. 1. Knight. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.
A Lease for yeares, if the Lessor should so long live. rendring Rent at the Foure Feasts, or within thirteen weekes after, after one of the Feasts the Lessor dyeth, and before the thirteene weekes be past, the Executor brings debt against the Lessee, and the Defendant demurreth upon the Count, and it was adjudged a good demurrer, and that the action did not lye.

1. Because the disjunctive is added for the benefit of the Lessee; and the first day was but for voluntary payment, but the legall time of payment was the end of the thirteene weekes, before which when the Lessor dyeth, the Lessee is discharged by act of God for that Quarter; if the Lessee before the day, pay the Rent, this is voluntary and not satisfactory, but it is good to give seisin; if payment be in the morning, and the Lessor dyeth at noone, this is voluntary and satisfactory against the heire, but not against the King: Payment the last instant of the day is satisfactory, and after the day it is coercive and satisfactory.

2. When the first day is past, it is as if the Rent had been onely reserved the second day, for the election is good.

3. The rent is to be paid out of the profits of the Land: *Ergo*, in regard of time it shall not be apportioned; and if the Lessor dye betwixt the first day and the last day, his heire, and not the Executor shall have the rent, because it was not then due; if a man Lease for yeares, rendring Rent ar M. or within a moneth after, with a condition of re-entry, and

and the Lessee tenders it at the last instant of M. the Lessor shall not re-enter upon demand the last day of the Moneth, because the Lessee had liberty to pay it then; and the difference was taken betwixt the said disjunctive Reservation, and when the reservation is at a certaine Feast, and a condition is added, that if it be arreare by the space of a moneth after the Feast, that then the Lessor, &c. there the Lessee *fe. 3. p. 12*
 for salvation of his Lease, cannot tender it at the last instant of the Feast, because he had no such liberty as in the other Case: A Lease for yeares rendring Rent at M. or within twelve dayes after, upon condition to re-enter if it be arreare by the space of twelve dayes after any of the said Feasts, or days, the Lessee shall have twenty foure dayes in safeguard of his Lease after the Feast of M. and in the Case at Barre judgement given, *Quod querens nil capiat per billam.* *May 19. 1620*

James Osbornes Case, 11 Jacobi, fol. 130.
Banco Regis

IN an action upon the Case, for that the Plaintiff had bought of the Defendant diverse goods, which he refused to deliver, whereof one was *unum fulchrum lecti, Anglice*, a Feild Bedstead with a Testerne, and Curtaines of Saye, the Plaintiffe recovers, and damages assessed intire, where none ought to be given for the Testerne, &c. for *Fulchrum* signifieth a Bedstead onely; upon error brought therefore, judgement was affirmed, for one thing onely is here put in issue, for the other things are not alleadged *Positive*, sed *expensive*, and are nigation, but when two things are put in issue, or *Oblique*, inquired of by the Jury, there it is not good; and it shall not be intended that damages were given for that onely for which the

action was brought, but in an action upon the Case for words spoken at one time, whereof some are actionable and some not, there damages may be assessed intirely, and shall be intended to be given for the words actionable onely.

1. Because the Plaintiffe must declare as the words were.

2. Because the words not actionable aggravate the damages, otherwise if spoken at severall times; but here damages shall be intended to be for that which is actionable onely, and the rest, as if never alleadged: and in Writs or Pleas English words are not admitted by 36. E.3. cap. 15. except they be parcell of a name, as *Io.* in the *Hall*. 2. words which passe under the name of Latine, are,

1. Good Grammaticall Latine.

2. Words significant in Law, and not in Grammer.

3. Incongruous Latine, which doth not viciate a Plea, or Grant, nor judicall Writ.

4. Words insensible having no countenance of Latine, and are rejected; but fained words as *Velnetum*, *Stapedia*, &c. are good.

Read, and Redmans Case, 10. Jacobi fol. 134.

THe Defendant in debt brought by two Executors, pleads the death of him who was summoned and severed.

Resolved, The Writ shall not abate; if two purchase an original reall action, and one dyeth pending the Writ, this shall abate in all, as in case of joyntenants, or parceners, where one dyeth having issue, or no issue, because that shce may have a Writ for the whole, and shall not recover a moiety, and one shall not recover upon a false reall Writ, or unapt for his case, in respect he may have an apt Writ, although

though it happen after the Act of God, but if two purchase a judiciall Writ, and one is summoned, and severed, and dyes without issue, the Writ shall not abate; the same law where jointenants, but if the Coparcener had issue, then it shall abate: If one of the Plaintiffs after summons and severance marryeth, this shall not abate the Writ. In personall and mixt actions, although an intire Chattell be demanded, the death of one after summons and severance doth not abate the Writ; as in Writ of ward of the body: In a *Quare impedit* without severance, &c. If one dye the Writ shall not abate, because thereby the other should be disinherited, as upon penarty and sixe monthes passed; but without question, if one of the Plaintiffs in a *Quare impedit* be severed and dye, the Writ shall not abate; where the Plaintiffs are onely to discharge themselves, the Writ shall not abate by the death of one of the Plaintiffs or Defendants, and therefore there the Non-suite of one, is not the Non-suite of the other, but otherwise it is in a Writ of Error: Note, summons and severance is before apparance, and Non-suite after apparance, where the severance is without Proceffe.

Richard Smiths Case, 10. Jacobi, fol. 135.

R. S. brings a *Quare impedit presentare ad medieta-tem Ecclesiæ*, and adjudged the Writ was good.
 1. None shall have such a *Quare impedit*, but when there are two severall Patrons: And 2. Incumbents of the Church; therefore if two present by turne the *Quare impedit* must be *presentare ad Ecclesiam*: when the Register giveth a Writ for the whole, this is a good warrant to bring it of any part, if the case will warrant it; but it seemed to the Chiefe Justice that in the Case at Barr, the Writ might have been
 D d 3 good,

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good, *Præsentare ad Ecclesiam*, for as to him it is one Church.

*Cases upon the Commissioners of Sewers,
7. Jacobi.*

*The Case of Chester Mill upon the River of Dee,
fol. 137.*

ADjudged that the Statute of *Magna Charta omnes
Kidelli deponamur*, extends onely to open Weares
for taking of Fish; and that Commissioners of Sew-
ers cannot subvert a Causeway, &c. erected before the
time of *E. 1.* but by the Statutes of 25. *E. 3. c. 4.* and
1 *H. 4. c. 12.* if they be inhaunced, they ought to be
amended by abatement of the inhauncement, and
the Causeway in question was erected before the time of
E. 1. and never since inhaunced, and therefore out
of all the said Statutes.

Keidhleys Case; 7. Jacobi Communi Banco, fol. 139.

IT was resolved, That if one be bound by prescrip-
tion to keep a Wall *Contra fluxum Maris*, and the
wall is subverted by a suddaine inundation of waters,
salt or sweet, by the Statute of 23. *H. 8. cap. 5.* the
Commissioners have power to taxe all equally who
have damage for such surrounding, for no default
was in the party; so if the Wall be in inevitable dan-
ger, but if it be through his neglect, each one may
have his Action upon the Case against him, and if
the danger be not inevitable, he onely shall be
charged.

2. Resolv. By the said Statute, the Commissioners
are not bound to observe the customes of *Romney
Marsh*,

Marsh, but where such customes are in any places within their Commission.

3. According to your wisedomes and discretions in the said Act are to be interpreted according to Law and Justice, for every Judge or Commissioner ought to have *duos sales, salem sapientia ne sit inspidus, & salem conscientia ne sit Diabolus* : and discretion is *scire per legem quid sit justum* : and every of their Ordinances ought to consist upon four causes.

1. The materiall cause, and that is the substance.
2. The former cause, and that is the manner.
3. The efficient cause, that is their authority.
4. The finall cause, and that is for the publique good.

The Case of the Isle of Ely, 7. Iacobi. 147.

THE Commissioners of Sewers decreed that a new River shall be cut out of Owse, seven miles within the maine soyl of the Isle, and for the doing thereof, and for the effecting thereof, taxed diverse Townes in the County of C. out of the Isle generally ; that is, so much upon every Towne. 2. questions.

1. If the Commissioners have power to make such a New River ?

2. If such a generall tax be lawfull ?

By the Common Law the King ought to defend the Realme, as well against the Sea, as Enemies, and to provide that the Subjects may have safe passage over Bridges, and high-ways, and therefore if the Walls of the Sea, or Gutters be not scoured, he ought to award a Commission, to inquire of such defaults as by the Register amongst the Commissions of *Oyer and Terminer*. See there a president, 44. E, 3. for reparation of ancient Sewers, &c. or making them new, but the Statute of 6. H. 6. cap. 5. and divers others,

for making new Walls, &c. were onely temporary, and that power is omitted in the Act of 23. H. 8. cap. 5. which is made perpetuall by 3. E. 6. cap. 8. and so the Commission in this point insueth the Commission which was at the Common Law : Therefore it was resolved, That the Commissioners in this Case could not make the said New River, because their Commission extends onely to the reparation and new making of ancient Walls, Gutters, &c. And it would be hard to give power to Commissioners to try new inventions to charge the Countrey, which may never take effect : And it appeareth by the Register, 252. that a New River ought not to be made, and the old stopped, without an *Ad quod damnum*, and the Kings license : yet when a new Sewer is to be made, any small alteration for the publique good of such a place may be made : so of an ancient wall against the rage of the waters in case of inevitable necessity, but if by timely reparation that perill might be avoided, no other ought to be made : *Si assuetis mederi possis nova non sunt remanda* : but if new inventions appeare profitable, contribution must be voluntary, and not by compulsion ; and in 3. Jacobi Popham Ch. Justice preferred a Bill in Parliament to make a new River in the Isle, but it was rejected.

2. Resolved, None ought to be taxed, but he who may have damage by the default, or profit by the reformation ; also the assessment must be according to the quantity of their Lands, and number of Acres, and according to the rate of every mans profit and portion, and the taxation in generall was not warranted, but it ought to have been in particular upon every owner or possessor, observing the said qualities. Some Statutes of Sewers are in *defendendo & reparando Wallas, &c.* Some in *destruendo & amovendo noxia*, and some touching both.

In the Court of Wards.

Scroopes Case, 10. Jacobi, fol. 143.

N. S. made a Feoffment to diverse uses, with power of revocation by Indenture, and after by another Indenture (observing all incident circumstances prescribed) the Feoffor covenanteth to stand seized to severall other uses.

1. This inureth to a revocation.
2. To raise new uses: and so it was resolved in the Kings Bench, betweene Frampton and Frampton, Tr. 2. Jacobi. *Quia non refert an quis intentionem suam declaret verbis, an rebus ipsis vel factis*, and when he limits new uses, he signifieth his purpose to determine the uses before.

The End of the Tenth Book.

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THE ELEVENTH BOOK.

*The Lord de la Wares Case, 39. Eliz. in
Parliament, fol. 1.*

THOMAS la Ware Great Grandfather of the now Lord in 3. H. 8. was summoned to the Parliament by Writt, and by 3.E. 6. it was enacted, that *William* the Father of the now Lord *Thomas*, shall be disabled to claime any dignity, during his life, notwithstanding W. was called to Parliament by Q. *Elizabeth*, and sate as Puisne Lord, and dyed, and *Thomas* now Lord, sued in Parliament to the Q. to be restored to the place of his Great-Grandfather, that is betwixt the Lord *Barkly*, and the Lord *Willoughby* of *Eresby*; and resolved, that he should be restored, for his Fathers disability was not absolute by attainder, but onely temporary and personall, during his life, and the acceptance of the New Dignity shall not hurt the Petitioner, the Father being then disabled, and an Esquire onely, so that when the old and new Dignity descend together, the old shall be preferred: which resolutions by the Judges, was well approved by the Lords Committees, and after confirmed by the Queene.

Auditor

Auditor Curles Case, 7. Jacobi. fol. 2.

Queene Elizabeth grants *Officium unius Auditorum Curia Wardorum*, to W. T. and W. C. for life; & *eorum diutius viventi*, the King grants it in reversion to I. C. & I. T. I. C. dyeth, the King grants it reversion to R. P. W. T. dyeth.

1. Resolved, the grant of the Office *Unius auditorum*, &c. is good to two, and the survivor of them, for 31. H. 8. c. 46. maketh the two Auditors one Officer, and the word *Unius* is not numerative, but denoteth the unity of the Office.

2. In such a grant the words *& eorum diutius viventi*, are not void, for otherwise by the death of one of them, the interest of both would be ended; but now the survivor remains Auditor, and another shall be added to him, and till another is added to him, his voice in Court is suspended, because by the Statute there must be two, so if the King grant by a Patent to one, and by another to another, this is good, and untill the second is added the first hath no voice in Court.

3. The nomination of Auditors ought to be under the Great Seale.

4. This Office cannot be granted in reversion.

1. Because it is judiciall, and one cannot be Judge in *futuro*, and perhaps he was sufficient at the time of the grant, but not when it takes effect.

2. Although it be in part judiciall, and in part ministeriall, yet it is intire, and although ministeriall Offices may be granted in *futuro*, yet this cannot, because it is inseparably judiciall also, for the King cannot grant the judiciall part to one or two, and the ministeriall to others.

3. If the grant be good; as to the ministeriall part yet,

yet it shall not take effect now, because one of the ancient Officers is living, and if he should exercise the ministerial part, with the survivor, there would be three Offices.

5. He who surviveth remaines Auditor, yet had no voice in Court, untill the King adde another to him.

6. The grant to P. is void.

1. Because in reversion.

2. Because it reciteth a void grant to I. C. and I. T. as good, and so the King is deceived of his grant.

Sir Iohn Heydons Case, 10 Jacobi, fol. 5.

Sir I. H. brings trespassse against F. C. T, C. and. I. C. F. C. appeareth, against whom the Plainriffe declareth, with *Simul cum, &c.* who pleads *Non culp.* so doth T. C. which issues were tryed severally, and the issue betweene the Plainriffe and F. C. was first tried, and damages assessed to 200. *l.* and the other against T. C. 50. *l.* I. C. appeares, and confesseth the Action, a Writ of inquiry of damages is awarded, but none issued, judgement for the Plainriffe, and affirmed in Error.

1. Resolved, in trespassse against diverse who plead *Non culp.* or several Pleas which are found in all for the Plainriffe, damages shall not be assessed severally, although one did more wrong then another, because the trespassse is intire, and the Act of one, is the Act of all, but if they be found guilty at severall times, they may, and if the Plainriffe confesse the trespassse to be at severall times, the Writ shall abate.

2. If two Trespassors plead severally, both shall be bound with the damages taxed by the first Jury, and the other shall have an attaint although he be a stranger to the issue, because he is privy to the charge;

charge, if one of them after appearance make default, a Writ of inquiry shall be awarded to save a discontinuance, but none shall issue, because he shall be contributory to the damages taxed by the Jury, who tryed the other issue, and the other shall not be charged in damages assessed, upon a Writ whereupon he can have no attain, but if the other issue be found against the Plaintiffe, then it shall issue.

3. Although there was a discontinuance against I. C. because in the common place, where the Action was brought, there is no continuance after a Writ of inquiry, (otherwise it is in the Kings Bench) yet it is aided by the Statute of 32. H. 8. c. 30.

4. If two Juries give a Verdict at one time the Plaintiffe shall have judgement, *De melioribus damnis*, if he will: but *fiat nisi unica executio*, in trespassse against diverse to plead severall pleas triable by the same Jury, if the Jury sever the damages, all is vitious

Priddle and Nappers Case, Jacobi. fol. 8.

THE Plaintiffe in a prohibition declareth, that the Prior of M. was seised of 22. Acres, and of a rectory time out of mind, &c. untill the dissolution, &c. and so, for all that time held them discharged of Tithes, and conveys the 22. acres from the King, to himselfe, and that the Defendant *Proprietarius rectorie predict.* sued the Plaintiffe for Tithes, the Defendant traverseth the prescription of discharge; the Jury found that the Prior, time out of, &c. was seised of the said 22. Acres, and of the advowson of the Rectory, and did appropriate it by License, 20. H. 8. the Incumbent then being living, who dyeth, and that the Prior held it united to the dissolution: judgement for the Plaintiffe.

Lib. II. Priddle and Nappers Case. 415

1. Resolved, Although that every Church parochiall is supposed to be presentative, yet the Plaintiffe may plead, that the Prior, &c. time out of, &c. were Rectors of it, for this amounts to so much, that it was impropriated, but it needs not shew how, because before time of memory, but the conclusion of the prescription of unity. *Viz. Ratione cuius*, he was discharged of Tithes by unity, but of payment of them, notwithstanding the mistaking of the conclusion doth not vitiat the Count when the cause to have a prohibition, is good.

2. The plea of the Defendant to have a prohibition, is not good, because he traverseth the conclusion, *Viz. The prescription of discharge*, where he ought to traverse the prescription of unity, for the conclusion is not traversable, and because it is a matter in Law.

3. The issue is not well joyned.

1. The matter of discharge, is by reason of discharge, by the Statute, and the issue is by discharge at the common Law.

2. In every issue there must be an affirmative and a negative, but here is no affirmative, for the conclusion is no affirmative, but an inference.

4. The impropriation is sufficient, although the License were generall, and the incumbent living, for it it shall be construed in such a speciall sence, that it may take effect, and the License is alwayes generall, for the incumbent may dye or resigne, before the impropriation.

5. Admitting the impropriation voide it had not beene made good by 35. *Elix. c. 3.* for this settles in the King all possessions of Abbeyes with qualification, notwithstanding any defect in any surrender, &c. which intitlesh the King and this defect is not within
this

the qualification, but if the impropriation had been good by reputation, and so used, this had been given by the Statutes of 27. & 32. H. 8.

6. If the Jury found answer to bar the Plaintiff, this is not to be regarded, because an attaind lyeth not, nor the Witnesses punished for perjury, that matter not being materiall, to the issue.

7. Resolved, that perpetuall unity untill the dissolution is by the Statute, *Præsumptio*, & discharge of payment of Tythes, except that the Fermors have paid Tythes, and such unity ought to be *Iusta, aqualis*, that is, free in one, and other, *Perpetua & libera*, but if the Abbey were founded, within time of memory, he cannot at all, and here it appeareth that the impropriation was made in 20. H. 8. so that it appeared to the Court, that before that the 20. acres were charged with Tythes, for of common right all Lands ought to pay Tythes; therefore the Chiefe Justice concluded, that the said 20 Acres (as this Case is) were chargeable with Tythes, but in regard the information is good, and the plea *Pro consultatione habenda*, altogether insufficient, and the Verdict impertinent to the issue, they would not grant a consultation.

Doctor Grants Case, II. Jacobi, Communi Banco, fol. 15. In a Prohibition.

1. **R**ESolved, it is a good prescription that every Inhabitant in a Parish, have paid 2 s. in the pound, of the value of their houses, *per annum*; in lieu of Tythes, because it may have a lawfull comencement, for it may be, that this was so time out of mind for the Lands, whereupon the Houses were built, as a *Modus decimandi*.

2. That

2. That the Parson may sue for it in the Court Christian, for that it is in the name of Tithes; and every ancient Cite and Borough, had for the most part such a custome for their Houses, for the maintenance of their Parson, and obventions include oblations, rents, or other revenues, and after, a consultation was granted.

Sir Henry Nevills Case, II. Jacobi. fol. 17.

It was resolved, that a customary Mannor may be holden of another Mannor, and there may be Lord, Mesne, and Tenant of it, and such a customary Lord may hold Courts, and grant Copies, and such a Mannor shall passe by surrender and admittance, and fines shall be paid upon alienation or discent, and if it be forfeited, the Lord shall have the services as annexed to the Mannor, so if Tenant at will, &c. admit Copy-holders reserving rent, this shall goe with the Mannor, after the will determined; and so note, a difference between reservations at the Common Law, and by the custome of the Mannor. And it was said, that the Mannor of *Aylesham* in *Norfolke*, is holden by Copy, and others in diverse other places: And judgement was affirmed in Error.

Doctor Ayraes Case, II. Jacobi. fol. 18.

14. E. 3. the K. Licensed R. de E. to Found in Oxford a Hall, sub nomine aula Scholarium Regine de Oxonia, in the exemplification 8. Jac. it was, Sub nomine aula Regine de Oxonia they present to the Church, by the name of preposit. Coll. Regine in Universitat. Oxonia & socior & Schollar. ejusdem, the incumbent deviseth the Rectory, and they by the name of preposit. Socior & Scholar Aula vel Collegij regina in Universitate

E e

versitate

versitate Oxonii, confirme the demise; and notwithstanding these variances it was adjudged, that as well the confirmation as the presentation was good; and the sole doubtfull variance is, that it was *Aula Regina*, where it ought to be *Aula Scholarium Regina*, but good, for the true name of the Colledge is so, for the word *Scholarium* is not necessary, but once, and if it be taken in construction to come after *Aula*, the provost will be the sole Corporation, by the name of *praposit. Aula Scholar. regina*, Ergo, it doth preceede in good construction. Also, the Founder named it so, and so it hath been alwayes taken, and if there be a small variance, this is not to the purpose, if it be so described that another cannot be meant, as a gift *Omnibus filiis I.S.* or *filia I.S.* when there is but one, or if *Richerus* Abbot of W. grant by the name of *Richardus*; *Nil facit error nominis cum de corpore constat*, and this was the ancient and constant Opinion in Case of Corporations. See the Case of the Major and Burgessees of *Lin*, in the tenth Booke.

Henry Harpur's Case, 12. Jacobi. fol. 23.

IN *ejectione firme* upon a Lease to J. W. in *unam capellam*, and Land in W. in the Parish of B. and Tiches, without shewing the certainty of them, the Visue was from B. the Case was. Sir H. B. seized of G. of the value of 30. *l. per annum*, and of N. of the annuall value of 18. *l. in capite*, covenanted to stand seized to the use of him and his Wife in taile, with remainders in taile, the reversion to himselfe, and after purchaseth Lands in Socage, and deviseth them to be sold by his Executors, the matter in Law resolved, but no judgement given, because diverse exceptions taken, &c.

I. *Resol.* That if tenant of the King in *capite* conveys

veyes his Land to one of the Uses, &c. and after purchase Socage, he may devise all the Socage.

2. A seck reversion upon an estate taile shall hinder the devise of Socage Land for a third part.

3. Although the reversion in fee continue in him, yet he may devise two parts of the Socage, and all if he had granted the reversion over.

4. Although he had exercised his power in making a Joynture of more then two parts, yet if the reversion in fee had not hindred, he might have devised all the Socage purchased after, howsoever the devise is good for two parts; for the reasons reported in *Loveyes Case*.

5. Although the consideration of advancing his Wife and their issues, extends not to the Brothers, yet the use is well raised to them, because the Law implyeth a consideration, and it is not to the purpose that they are found Brothers, because it appeareth in the Deed.

6. For the Mannor of G. the estate taile vanisheth by the death of Sir H. without issue male, and therefore that estate is no cause to restrain the devise for any part, but the reversion in fee is for a third part: So resolved that the Plaintiff shall have judgement for two parts. Exceptions to the Count and Visoe.

1. The *Ejectione firmæ* is of Tithes, without shewing the kinds of them; Ergo, not good, for a certaine judgement and execution cannot be made. 2. It may be it is in a *modus decimandi*, for which an *Ejectione firmæ* lyeth not.

2. *Capella* is demanded, which ought to be demanded by the name of a house.

3. The *Venire facias* is not well awarded, for it appeares that there are two B. one a Ville, the other a Parish, and W. a Ville in the Parish of B. and the

Tithes are alleadged to be in W. in *parochia de B.* so the Visne must be out of B. and W. because there is the most certainty; so that by reason of these exceptions, no Judgement was entred, but it was said that the Court of Wards, where a Bill depends for this matter, will take order for the possession accordingly.

Henry Pigots Case, 12. Jacobi, fol. 26.

B. W. brings debt upon Obligation made to him when he was Sheriffe, omitting the name of his Office, but it was after interlined by a stranger, the Defendant pleads *Non est factum*, without Oyer of the Deed, and judgement was given for the Plaintiff.

1. When a Deed is rased, the Obligor may plead *Non est factum*.

2. If a Deed be rased by the Obligee himselfe in a place not materiall, it is voyd, but not if done by a stranger, except in a place materiall, and here it was in a place not materiall, because it appeareth not to the Court that he was Sheriffe. If a Deed consist of diverse parts, whereof one doth not depend upon the other, and some of them are against Law, the Deed is good in part, but if any of them be rased it is voyd in all, so if the Seale of one be debrused, all is voyd: See *Matthewsons Case* in the fifth Booke.

Alexander Powlters Case, 12. Jacobi, fol. 29. dissent.

A. *P. felleo animo*, burned a House in *New-Marbet*, whereby the greatest part of that Towne was burned.

Resol. He shall not have his Clergy, for this was felony

felony by the Common Law; and so hainous, that he was not replevisable, no more then for Treason, as appeares by *Westminst. 1. cap. 15.* but he shall have his Clergy at the Common Law; for impediments to have Clergy, were first disability to be a member of holy Church, as a blind man, or woman.

2. Heresie.

3. Infidelity, as a Saracen or Jew, but a man excommunicated, or outlawed, shall have it.

5. Confession before the Statute of *Articuli Cleri, cap. 15.* because he cannot make his purgation.

6. High Treason, or petty Treason before 25. E. 3.

cap. 4. So of Sacriledge, and of *insidiatores viarum, & depopulatores agrorum*: See the Statute of 4. H. 4.

cap. 2. but the Statute of 23. H. 8. cap. 1. taketh

away Clergy where one is found guilty of burning of

Houes, but that is to be intended by verdict or con-

fession; for if hee stand mute, or challenge more

then he ought, or be outlawed, these are out of the

Statute, or if he commit Burglary, and not Robbery,

he shall have his Clergy; by 25. H. 8. cap. 3. hee

who is found guilty of any of the said offences shall

loose his Clergy; and if he stand mute, or challenge

above his number, but that extends to the princi-

pal onely in case of indictment, and not to the ac-

cessory before the fact, nor to appeales or approve-

ments, nor to outlary; but these two Statutes were

taken away by 1. E. 6. cap. 12. but 25. H. 8. was

revived by 5. & 6. E. 6. cap. 10.

Obj. That the said Statute was not revived in all,

but as to stealing of Goods in one County, and fly-

ing into another, for so is the stile of the Act.

2. If it be revived, this takes not away Clergy,

where one is found guilty by Verdict; but the Sta-

ture of 23. H. 8. which is not revived. But it was Re-

solved that the intire Act is revived.

1. Although the Statute of 5. E. 6. reciteth these offences solely, and reviveth the Act as to Clergy, touching such offences, that shall be intended such in mischief; so *Westminster*, 2. cap. 3. is expounded touching Infants having advowsons, whether they be in ward or not; and the stile is not to the purpose, for many Statutes are of greater extent then the stile, as 27. H. 8. of uses concerning Joyntures; yet the preamble is of transferring uses into possession, also otherwise these words and every clause, &c. shall be surplusage, if it extend not to all the Act, for there is but one clause in it which concerneth the offences in 5. & 6. E. 6. also it is that every Article concerning Clergy as to such offences shall be revived, and there is but one which concerns these offences; and many times penall Statutes are taken by Equity, as 8. H. 6. cap. 12. ordaineth that the imbezelling, or withdrawing a Record, whereby a Judgement may be reversed, shall be Felony, and by Equity, making of a bad Judgement good, is Felony; so 25. E. 3. for killing of a Master, extends to the Miltris.

2. 25. H. 8. takes away Clergy, where one is found guiltie by Verdict; because it takes away if he stand mute, or challenge, &c. in like manner as if he were guilty after the Lawes of the Land, which are affirmative words: And 4. & 5. *Phil. & Mary*, cap. 4. takes away Clergy from the accessory before, which they would not have done if they had not thought that it was taken away from the principall by the other Act. By 18. *Eliz.* cap. 7. Clergy is taken away in case of Burglary, where hee is found guiltie by Verdict, Confession, or Outlary; but if he be indicted at the Common Law, and stand mute, or challenge over, &c. he shall have it, and not if hee be indicted by 23. H. 8. or 5. E. 6. of Burglary, and put

put them who were in the House in feare with Robbery, or upon 1. E. 6. without Robbery : 4. & 5. *Phil. & Mary*, takes away Clergy where one is accessory before to a Robbery in a dwelling House ; *Ergo*, before that such an accessory shall have it : Breaking of a House in the night without Robbery, is no Burglarie, and if he doth rob he shall have his Clergy, if none were put in feare, or that any of the Family (and not a Stranger) be not in another part of the House ; but this was before 29. *Eliz. cap. 15.* whereby Clergy is taken away without putting any feare, if he rob any man of above the value of five shillings.

Accessory before in robbing a House in the day is ousted of Clergy by 4. & 5. *Phil. & Mary*. Accessory in robbing a Booth in the night or day, or out-house upon 39. *Eliz.* shall have his Clergy : *Nota*, Although a Statute takes away Clergy from the principall, yet the accessory before or after, shall have it ; and where by Statute for any offence a man is ousted of his Clergy, the indictment must containe the offence, with the circumstances in the Statute : *Dyer*, 99. and 183. And A. P. was ordered to be hanged in Chaines, &c.

Metcalfs Case, 12. *Jacobi*, fol. 38. In Accompr.

Judgement is given against M. *Quod computet & ideo in misericordia quia prius non computavit* ; and before final Judgement, Error is brought.

I. Resol. It lyeth not : 1. Because the Writ of Error saith, *Si iudicium inde redditum sit*, which shall be intended of the principall Judgement, as the Feast of St. M. shall be intended the principall Feast, and the Feme shall be received upon default of her Ba-

ron after judgement of admeasurement before the principall judgement.

2. It shall be intended an intire judgement, therefore in an action against two, if one plead to the issue, and the other confelleth, and judgement given against him, he shall not have Error before the Plea determined against the other, for otherwise there would be a failer of right: for the Kings Bench cannot proceed upon the Record, nor the Common place, because it is removed.

3. The first judgement is not *ad grave damnum*, for by that he looseth nothing, but judgement of the arrearages and damages is the end of the originall.

4. This is not properly a Judgement, but an award of the Court, as ouster of ayde, *in partitione facienda*, *an awarde quod partitio fiat*, &c. which are but interlocutory, and not definitive.

5. They have day by the Roll untill the last judgement; but if a Felon dye after the exigent awarded, and before attainder, a Writ of Error lyeth for necessity, for otherwise his goods are forfeited by awarding of the exigent without remedy; if diverse are sued by severall *Præcipes*, and Judgement given against one, he shall have Error before judgement given against the other, and if error be in the originall, the tenor onely shall be certified, for otherwise the Court cannot proceede against the others.

2. It was resolved, That the Record is not removed, because untill finall Judgement be given, the Chiefe Justice of the Common place hath no authority to send it, and they may proceed, notwithstanding the Roll be marked *Mittitur*.

Richard

Richard Godfreys Case, 12. Jacobi. fol. 42.

TWelve chiefe pledges according to the custome of the Mannor, to present at the Leet that every one of themselves ought to pay for themselves 10. s. *pro certo leta*, the Stewart imposeth a Fine of 6. l. upon them, the Lord distreineth for the Fine, and certainty of Leet, one of the pledges brings Replevin, and judgement was given for the Plaintiff.

1. *Resol.* The fine is not well assessed, for it ought to be severall, and not joynt as it is, because the offence is severall, and although that the offence be joynt, yet the Fine shall be severall, as in disseisin and trespassse: But for the incertainty of the persons, and infiniteness of the number, many may be fined together, as a Towne for the escape of a Felon; and the reasonableness and excessiveness of the Fine shall be determined by the Judges: *Excessus in re qualibet jure reprobat*ur communi, as excessive distresse, excessive ayde, and excessive amerciamen. en. against the Common Law.

2. If the Fine be imposed erroneously, it may be avoyded by Plea, for he had no other remedy.

3. The Lord cannot distraine, *pro certo Leta*, without prescription, because it is against common right, but he may for a Fine or amerciamen; but for an amerciamen in a Court Baron, the Lord must prescribe; a Fine because it is assessed by the Court, needs not to be assessed, but an amerciamen must be assessed by the Countrey.

4. Admitting that he may distraine *pro certo Leta*, he shall have a returne, although he had not cause to distraine for the Fine, for where one brings an Action for two things, and it will not lie for one of them,

them, it shall abate onely for that if he cannot have a better action for it, but if he may it shall abate for the whole; as in a *Formedon* of Land, and of an avowson, the Writ shall stand for the Land; so if a man avow for diverse Rents arreare, and it appeareth, that parcell is not yet due, yet the avowry is good for the residue; but if a man bring a Writ of Entry in nature of an Affize of two Acres, where it appeareth that for one Acre he ought to have a Writ of Entry in the *per*, there all shall abate, for this extends not to the action, but to the Writ onely.

Richard Lifords Case, 12. Jacobi, fol. 46.

IN trespassse the Defendant pleads that J. L. was seized in fee, and demised to T. S. and M. P. (excepting Trees above twenty one yeares growth) if not decayed for their lives, and covenanted to stand seized *de tenementis predictis cum pertinentijs superius dimissis*, to the use of R. L. in taile, &c. and the Defendant as Servant to the said R. L. entered and sold Trees; and Judgement was given against the Plaintiffe.

1. Resol. That the Trees notwithstanding the exception, remaine parcell of the inheritance, and are not Chattels, but shall descend to the Heire, for the Law doth not favour severance of the Trees from the Land; therefore if one bargain and sell Land, upon which there are Trees, they shall not passe without intolemment.

2. If there had not been such an exception, the generall interest of them is in the Lessor; and the Lessee had but a particular interest in them, and the Lessor may sell them without license of the Lessee, to take effect after the Lease determined, and tithes shall not be payd for them because they are parcell

of

of the inheritance : 2. By the exception of them, the soile is not excepted, but onely so much as sustained the Tree, and if he by licence of the Lessee root them up, the Lessee shall have the soile, but by exception of Wood, the Land it selfe is excepted ; if an Acre, or an advowson be severed from the Mannor by exception upon a Lease for life, it shall not be parcell of the Mannor againe ; otherwise of trees for they were not severed *in facto*, because they grow out of the Land.

3. A thing in possession cannot be parcell of a reversion upon an estate for life, but Trees which grow out of the Land, and Fish or Deer in the Land may, and shall passe with it.

4. In this Case by grant of the reversion generally, or of the Tenements the Trees passe ; for the inheritance of all the Land passeth, and thereby the Trees annexed to it ; the disseisor by his entry shall have the Corne upon the ground, as well as the Grasse, by relation of continuance of possession, but this relation is not of effect, have a trespass against any, but the first disseisor ; *in actione juris semper aequitas existit*, and the emblements shall be recovered in damages.

5. In the Case at Barre by exception of the Trees power is reserved to the lessor, or his servants, to enter and shew the Trees to the Vendee : *Culicunque aliquis quid concedit, concedere videtur & id.*

6. The plea in Barre is insufficient, for he sheweth that there was another joyntenant for life not named in the Writ, and demands Judgement if action which is an unapt conclusion.

2. The Plea is double, one to the Writ, another to the Action.

3. He pleads the entry of the lessees for life, which is surplusage.

4. He

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4. Hee averreth not that the Trees which were sold were not Dotards which are excluded out of the exception, but that they, *de jure pertinebant* to R. L. which is not formall : but upon all the matter there appeared sufficient cause to give Judgement against the Plaintiffe, and therefore by the rule of the Court, *Querens nil capiat per billam.*

The Case of the Taylors of Cloaths, &c. of Ipswich,
12. Jacobi, fol. 53.

THe Taylors of I. make an Ordinance that none shall exercise the Trade in I. if he have not been an Apprentice for seven yeares, and if he doe not appeare before them to be approved, upon forfeiture of five Marks, and for breach of it, bring debt; the Defendant pleads that he was retained by A. P. to be a domestick Servant, and that he made Garments by his command.

1. *Resol.* At the Common Law none may be prohibited to exercise any Trade, although he hath never been an Apprentice, and be ignorant; but if he misdoe any thing, an action of the Case lyeth.

2. This Ordinance for so much as is not prohibited by the Statute of 5. *Elix.* is against Law, for after seven yeares Apprentiship he may exercise his Trade without allowance of any.

3. The Statute of 5. *Elix.* doth not prohibite the private exercise of any Trade in a Family, therefore this is out of the said Ordinance.

4. The Statute of 19. *H. 7. cap. 7.* doth not corroborate any Ordinance against Law, if it be allowed, but the allowance dischargeth the penalty of 40. *l.* for putting in use any ordinances which are against the Prerogative of the King, or the common profit of the people; and Judgement was given, *Quod querentes nil caperent per billam.*
Edward

Edward Savells Case, 12. *Jacobi*. fol. 55.

AN *Ejectione firma* lyeth not of a Close, but it must be of a certaine number of Acres, and the nature of them must be shewed: A Writ shall not abate for want of order. *Viz.* Of a House before Land, &c. and judgement was stayed.

Benthams Case, 12. *Jacobi*. fol. 56.

IF damages or costs are omitted, or not well assessed by the Jury, if the Plaintiff release them, he may have his judgement, and it shall not for that be reversed: Insufficient assessment of damages, and no assessing is all one.

Doctor Fosters Case, concerning Recusants. 12. *Jacobi*. fol. 56.

AN Information was preferred against a Recusant, by an Informer, *Tam pro domino rege quam pro se ipso*, before the recusant was convicted for 220*l.* that is, 20*l.* a Moneth for a 11. Moneths absence from the Church, &c. And judgement given against the Defendant.

1. Resolved, that he may be convicted (to satisfy the Statute of 23. *Eliz.* in this same Suite, and convicted shall be taken for attainted) for he shall forfeit nothing before judgement.

2. The Branch of distribution in the Act of 23. *Eliz.* extendeth as well to the clause of penalty for recusancy, as to that of hearing or saying Masses, for it is all one to say, shall forfeite, and shall forfeite to the King.

3. Diverse acts of Parliament give the penalty to the

the King, and yet after make a distribution thereof to another who will sue, as 3. H. 6. cap. 3. & 3. H. 7. 3.

3. He against whom judgement is given, upon demurrer or default, or otherwise, is convicted within the Statute, for he is attainted, which implieth it, for it is so found by the Judges: so by the Statute of 8. H. 6. treble damages are given where a disseisin is found to be with force, this extends to a judgement by *Nihil dicit*, or default.

4. The Statute of 28. *Eliz.* doth not take away the Statute of 23. which giveth liberty to the informer, &c. for,

1. It is made for more speedy execution of it.

2. It doth not alter the suite of the party, but of the King, and leaveth the Informer as he was before.

3. The Act of 28. giveth not the penalty to any new person, for it was given to the K. by 23. *Eliz.*

4. The Statute of 28. extends onely to Indictments, and toucheth not informations.

5. The Defendant is not within 28. *Eliz.* if he be not convicted at the suite of the K. *Ergo*, this is left as before.

6. Because the Statute is in the affirmative, and they may stand together, but the Statute of 28. alters the Statute of 23. in this, that it confineth Suites against Recusants in the K. Bench, or Assizes, &c. which clause extends as well to the suite of the Informer, as of the Queene, and the Statute of 35. *Eliz.* and 3. *Jacobi.* enlarge the Jurisdiction, as to Suites of the K. and touch not the suite of the party.

5. The Statute of 35. taketh not away the Action popular given by 23. for it was made to give more speedy remedy, and not to take it away, a feme Covert is within the Statute of 23. and 1. *Eliz.* but before

fore the Statute of 35. *Eliz.* if a Feme Covert had been indicted of recov^{er}, the forfeiture should not have been levied of the goods of the Husband, because he was not party thereunto; otherwise in an Information or Debt brought by the informer; and in that that the Statute of 35. is, that the K. shall recover all the paines, &c. in such sort, &c. this alters the remedy onely, as to the Queene, for now shee may proceed by action, as for recovery of any other Debt by the Common Law, in such manner as 1. *H. 7. c. 1.* giveth a Formedon against Parnor of the profits, &c. also 35. *Eliz.* is in the affirmative, and although it giveth the penalty of 20. *l.* by the Moneth, yet it taketh not away 1. *Eliz.* which giveth 12. *d.* for every Sunday and Holy day, and where this Statute saith, that the conviction shall be in the K. B. or at the Assizes, yet the Justices of Peace and others authorized by 23. may take Indictments: The Statute of 3. *Jacobi.* inflicteth Imprisonment upon a feme Covert, yet it taketh not away the forfeiture before: where a new person is designed by. a new Statute, this taketh away the ancient Statute if they cannot stand together, and although there are exclusive words concerning Courts, yet the Court of K. Bench is not excluded, because it is *Coram Rege.*

6. A Recusant may plead *Auterfois convict.* or other collaterall barre, as pardon, submission, &c. out of the Indictment, for 2. *Jacobi. c. 4.* extends onely to defects, within the Indictment or other proceedings; and the Informer cannot charge any who is convicted before at the suite of the Queene, upon 23. or 35. *Eliz.* or 3. *Jacobi.* and upon 23. the Informer must sue within a yeare and a day.

Nota if after a popular action comenced the K. Attorney will not prosecute, the Informer may for his part, and condemnation or acquittall at his suite, is a barre

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barre against the K. and all others, yet the K. may pardon it before an Action commenced, and if the Informer die, the Attorney may prosecute the suite, and the Information shall serve for the King.

The Case of the Maisters and Fellowes of Magdalen Colledge in Cambridge, 13. Jacobi. fol. 66.

DOCTOR K. Master of M. Colledge, and the Fellows 17. *Eliz.* grant to the Queene, reserving rent, upon condition to grant over, which is done accordingly, the Jury finde 13. *Eliz.* of Deanes and Chapters, and 18. *Eliz.* of Confirmations, a fine with Proclamations is levyed, and five yeares passe: Doctor K. dyeth, the successour accepts the rent, and within five yeares after his Election enters, and he and the Fellowes demise to the Defendant. And judgement given for the Defendant.

1. Resolved, the Master and Fellowes are restrained by the Statute of 13. *Eliz.* to grant to the Queene for the Q. is a Parson within the letter of the Statute, and if he should be exempted, this should be by construction of Law, which cannot be.

1. Because a generall Statute for maintainance of Religion and good literature, and reliefe of the poore, binds the K. although he be not named: and it appeareth by the Statute of 1. *Eliz.* that the K. is included within the words Person or Persons, for there he is exempted.

2. Because the Statute is made to suppress a tort, therefore the Statute of *Donis* binds him.

3. A Statute made to performe the intent of the Donor binds the K. without being named, as the Statute of *Donis*.

4. The Master and Fellowes are disabled to grant, therefore the K. cannot purchase of them.

5. The

5. The intent is to be observed, which was to convey by the Queene to a Subject, and so to make her an instrument of wrong, as one who holdeth of the Bishop grants to the Queene to regrant to a Corporation by Covin, to take away the Seigniorie of the Bishop by extinguishment, and to make an evasion out of the Statute of *Mortmaine*, this Patent shall be repealed *Jure regio*, so here: and this Act extends to a Corporation not incorporate by such names as are in the Statute.

2. The Statute of 18. *Eliz. c. 2.* doth not confirme this grant, for it is out of the words of the Statutes, because it is not made upon consideration, and here the reversion of the rent is not considered, because the Queene was to grant it before the rent be due; 2. grants to the K. may be void or voidable.

1. In respect of the Grantor, as if an Infant grant unto him.

2. In respect of the thing granted, as if a Foundership be granted.

3. In respect of the estate, as taile.

4. In respect of the grant, if it agree not with the rules of Law.

5. In respect of omission of any circumstance, as Inrollment, this Statute aideth not grants of the first sort, for it doth not inable persons disabled by the Law to grant, as here, nor of the second sort, but confirmeth grants of Tenant in taile, because he was able to grant, but aides not grants of the fourth sort: For, *Qua malo sunt inchoata principio vix est*, &c. but it aideth grants of the fifth sort.

3. At the time of the said Statute this grant needed no confirmation; because Doctor K. the Master was living.

3. The fine and Non-claime doth not barre them.

1. Because although it was not a conveyance made

by them, yet it was suffered by them within the words of the Statute.

2. Doctor K. nor any in his time cannot make his claime, and claime was made within five yeares after his death.

4. Acceptance of the rent doth not barre them, because it is a body agregate of many, and acceptance by the Master sole, doth not barre all, and the rather being without deed: And judgement given, *Quod querens nil caperet per billam.*

Lewis Bowles Case, 13. Jacobi. fol. 79. in Trover and Conversion.

T. B. Covenants to stand seised to the use of himselfe and his Wife for life, without impeachment of wast, the remainder to their first, second, and third Sonne, successively in taile, the remainder to the heires of their two bodiess, the remainder over, they have issue T. T. B. dyess, the issue dyess, the Winde bloweth downe a Barne, parcell of &c. and the Timber in the Count mentioned, was parcell of that Barne, the Feme carryeth the Timber out of the Mannor, he in remainder assigns by fine to the Plaintiffe, the Feme dyeth, the Plaintiffe brings an Action of trover and conversion against the Executors of the Feme; and judgement given against the Plaintiffe.

1. Resolved, untill the birth of the issue, T. B. and his Wife have an estate taile executed, but after this it is divided, and they have for life, the remainder to the issue in taile.

2. Tenant in taile after possibility had a greater estate as to the quality, then Tenant for life: Therefore,

1. He shall not be punished for wast.

2. He

2. He shall not be compelled to attorne.
 3. He shall not have aide.
 4. Upon his alienation a *Consimili casu*, lyeth not.
 5. After his death intrusion lyeth not.
 6. He may joyne the mise upon the mere right.
 7. He shall not be named in an Action for, or against him, Tenant for life, but not as to the quantity, therefore his seoffement is a forfeiture, rescit lyeth upon his default, and exchange by him, and Tenant for life is good.

3. The Feme is not Tenant in taile after possibility, &c. for this must be a remainder of an estate taile by act of God, and not by limitation of the party: and although she be Tenant in taile after possibility of the remainder, this doth not extinguish the estate for life, because it is not a greater estate.

4. She shall have the priviledges of Tenant in taile, after possibility, for the inheritance which was in her, and because she is Tenant in taile after possibility of the remainder, although shee cannot claime it in possession.

5. If Tenant for life or yeares cut Trees, or prostrate Houses, the Lessor shall have the Trees and Tymber, for the Lessee had them onely as things annexed to the Land, and he shall not have a greater interest by his tortious severance, but he shall have a speciall interest in the Tymber blowne downe, to build againe withall.

6. The Law giveth many priviledges to a Mansion house.

7. The Lessee without impeachment of wast shall have Trees which he cuts, for without impeachment of wast, is as much as without demand for wast done, otherwise it is, if it be without impeachment, &c. by Writ of wast.

8. The priviledge of without impeachment of wast

is annexed to the estate, therefore if he accept a confirmation of a greater estate, or assigne over, it is gone.

9. If Trees are blowne downe with the winde, the Lessee without impeachment of waste shall have them; therefore judgement given, *Quod querens nil caperet per billam*

The Case of Monopolies, 44. Eliz. fol. 84.

THE QUEENE grants to one of the Privy Chamber, the sole making and importation of Cards, this grant is void.

1. The grant of making of Cards is void: For, All Trades are for the publique good, for the exercise of Youth in labors, and therefore it cannot be appropriated to one solely.

2. A Monopoly had three incidents against the weale publique.

1. Raising of the price.

2. The Commodity is not so well made.

3. The impoverishing of poore Artificers.

3. The Q. is deceived in her grant, because shee thought it to be for the publique good: It prohibits them who have skill to make Cards, and giveth License to one of the privy Chamber, who had not skill, and the K. cannot suppress Card playing, because it is not *Malum in se*, and no Trade may be prohibited but by Parliament.

2. The License of importation of Cards is voyd, being without limitation or stint, for the Q. may dispence with the Statute 3. E. 4. c. 4. which doth prohibit it, but that ought to be with limitation.

Nota, The K. that now is in a Booke, Printed, 1610. hath published, that Monopolies are against Law, and commanded no Suitor to presume to move him

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him for the granting of them : But admitting the grant good in the Case at barre, the Plaintiffes sole remedy had been that which 3. E. 4. in such case giveth, and that ought to be pursued ; and judgement entered, *Quod querens nil caperet per billam.*

The Earle of Devonshires Case, 4. Jacobi fol. 89.

THE King reciting that decayed Munition belongs to the Master of the Ordinance, grants it unto him who sells it, and dyeth, his Executors are chargeable to the K.

1. Resolved, this cannot be claimed as fees of the Office, because it was erected but in 35. H. 8.

2. The grant is void, because it was upon a suggestion, that it was due to him.

3. Although the Testator claimes them to his owne use, yet he shall be accountable to the K. for the Law will make a privity, as if any man taketh the K. goods, he shall be charged in an Accompt, for the K. is not bound to charge any man as receivor, but generally, and otherwise the King may loose them by his death, and although the Kings goods came not to the hands of the Testator, yet he shall be charged if he were a meanes of the Kings damage and prejudice.

In Sir W. M. Case it was resolved, That no Officer of the K. can dispoile of any part of the K. treasure, for the profit or honour of the K. without warrant under the great or privy Seale, and after the Executors satisfied the K. for the said Munition.

*James Bagges Case, 13. Jacobi. Banco regis. fol. 93.
In restitution.*

REsolved, that to the Kings Bench authority belongs not onely to correct errors in judiciall proceedings, but other errors and misdemeanours extrajudiciall, tending to the Breach of the peace, or oppression of the Subject.

2. Causes of disfranchisement of a Citizen ought to be acts against his duty and Oath, but words against a Chiefe Magistrate are not, but may be of the good behaviour, and so of an attempt without an act done.

3. A Citizen cannot be disfranchized without Chartar or prescription, if he be not convicted by due course of law, as if he be attainted of forgery, perjury, or conspiracy at the Kings suite, or of any other crime whereby he becometh infamous.

4. If a citizen is disfranchised and hath a writ of restitution, and they returne sufficient cause, which is false, a writ to restore him shall not be awarded, but he may have a speciall Action upon the Case.

5. Such a returne ought to be cerraine, because the party cannot have an answer unto it; and after the court awarded a Writ to restore the said I B. and so he was accordingly.

FIN IS,

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